

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

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

**Case No. 27/2018**

GRIDCO Ltd.	.....	Petitioner
Vrs.		
M/s. Kanti Bijlee Utpadan Nigam Ltd. & Others	.....	Respondents

**In the matter of:**     **An application under Section 86 of the Electricity Act, 2003 read with Section 11 (1) (e) of Orissa Electricity Reform Act, 1995 and other enabling provisions for approval of PPA dated 27.12.2010 executed between M/s. KBUNL and GRIDCO Ltd. for purchase of power from 390 MW Muzafarpur Thermal Power Station, Stage-II, Bihar.**

**For Petitioner:**     Shri Manas Kumar Das, Director (Com.), GRIDCO Ltd. and Shri Arijit Maitra, Advocate

**For Respondent:**     Shri Abhinav Jindal, Sr. Manager (Commercial), Ms. Poorva Saigal, Advocate on behalf of M/s. Kanti Bijlee Utpadan Nigam Limited (KBUNL), Ms. Niharika Pattanayak, ALO, DoE, GoO and Shri G. C. Mohapatra, AGM (Commercial) of M/s. NTPC Ltd.

**ORDER**

**Date of hearing: 22.01.2019**

**Date of order: 04.10.2021**

The present Petition has been filed by M/s. GRIDCO Ltd. for according approval to the PPA executed between GRIDCO and M/s. Kanti Bijlee Utpadan Nigam Ltd. (in short KBUNL) under Section 86 (1) (b) of the Electricity Act, 2003 read with Section 11 (1) (e) of the OER Act, 1995. M/s. KBUNL (a joint venture company of NTPC Ltd. holding 65% of the equity along with Bihar Electricity Board) has installed a generation capacity of 2 x 195 MW at Muzaffarpur Thermal Power Station Expansion Project (in short MTPS Stage-II) in addition to its existing 2 x 110 MW thermal generating capacity in MTPS Stage-I. The two generating units of MTPS Stage-II have achieved their COD on 18.03.2017 and 01.07.2017 respectively. Ministry of Power, Government of India on 10.12.2010 had allocated Odisha a share of 7.7% of power from the MTPS Stage-II of M/s. KBUNL which is equivalent to 30 MW of installed capacity. Since there was requirement of power on account of anticipated load growth in Odisha, the Petitioner (herein GRIDCO) entered into a power purchase agreement with M/s. KBUNL on 27.12.2010. On 06.06.2011 the Petitioner had filed a petition before this

Commission bearing Case No. 43/2011 seeking approval of the present PPA along with several other PPAs. The Commission vide its order dated 20.07.2016 disposed of the matter with a direction to make fresh submission of individual PPA in respect of each of the upcoming inter-State generating station after incorporating certain observation made by the Commission in its interim order dated 16.08.2011. In the meantime, M/s. KBUNL had also filed a petition bearing No. 74/GT/2017 before Hon'ble CERC for approval of Tariff of 2 x 195 MW generating units under Section 79 (1) (a) of the Electricity Act, 2003 as it is controlled by the Central Government and the power station is a inter-State generating station.

2. Now, GRIDCO has filed the present petition as per the orders of the Commission dated 16.08.2011 and 20.07.2016 passed in Case No. 43/2011 as stated above. GRIDCO has submitted that:

- (a) In its tariff determination proceeding M/s. KBUNL has proposed before Hon'ble CERC that a fixed cost of the power station shall be 276.36 paise/unit and variable cost shall be 238.54 paise/unit. The fixed cost is to be computed by CERC on annual basis for a tariff period of five years. Similarly, energy charge rate is to be computed basing on the CERC Tariff Regulation, 2014.
- (b) GRIDCO has been as far as practicable avoiding to draw its share of costly thermal power from NTPC stations such as Farakka, Barh etc. as energy drawal from these stations was not allowed by the OERC in ARR of 2017-18. However, sometimes GRIDCO is forced to draw power from costly NTPC sources, which is above the approved quantum of power drawal by OERC due to low generation from IPPs. GRIDCO has to bear the fixed cost as per the percentage allocation of the Central Generating Station even if it has not requisitioned any power from such high cost stations.
- (c) The proposed installed capacity of IPPs in the State is 40490 MW from which 6971 MW is the State share out of which 1873 MW will be available to GRIDCO at both fixed and variable cost whereas balance 5098 MW shall be available at variable cost only. As per the 17<sup>th</sup> EPS, CEA had made a forecast of 10074 MW peak power for Odisha in 2021-22. Therefore, taking into account the demand forecast by CEA as well as of OPTCL, GRIDCO had then considered to execute PPAs with NTPC to discharge its responsibility of power procurement for the distribution licensees of the State in order to provide uninterrupted, reliable power supply to the consumers. However, in the mean time

MoP, GoI notified new guidelines for Home State shares which were applicable to 14 nos. of up-coming NTPC stations that includes NTPC Super Thermal Station at Darlipali in Odisha. As per the new guidelines the Home State share was increased from 10% to 50% in respect of said NTPC stations. In addition, GRIDCO has to purchase 50% power from Talcher Expansion Project (TSTPS) situated in Odisha.

- (d) On account of such upward revision in home State share along with capacity addition of IPPs and subdued demand growth in the State it is now poised to be a net surplus State. During the year 2014 it was observed that the load growth was not in tandem with that forecast in 18<sup>th</sup> EPS of CEA as well as of OPTCL. The peak demand of the State in 2016-17 was around 4000 MW, which was much less as compared to 5672 MW as per the 18<sup>th</sup> EPS and 5334 MW as projected by OPTCL.
- (e) Keeping in view such large availability from the generating stations inside the State, which would be sufficient to cater the future load growth, GRIDCO had decided to surrender the allocation of power from upcoming NTPC stations located outside the State as the State may not be able to dispose of such huge surplus quantum of power through power market and will have to pay huge fixed cost without availing such power. Accordingly, GRIDCO had requested the State Government to take up the matter with MoP, GoI for de-allocation of power from the upcoming NTPC stations located outside the State except North Karanpura. The Govt. of Odisha had also requested MoP, GoI accordingly and MoP had issued notifications from time to time (31.08.2015, 17.05.2016 and 08.09.2017) inviting willingness from other States for acceptance of the quantum of 614 MW power to be surrendered by Odisha. In this process allocated power from the NTPC stations of Nabinagar-I (155 MW) has been re-allocated in favour of Uttar Pradesh.

3. In its additional submission, referring to the judgment dated 31.03.2010 of Hon'ble APTEL in the matter of *BSES Rajdhani Power Limited Vrs. Delhi Electricity Regulatory Commission and others* and judgment of Hon'ble Supreme Court in (2006) 4 SCC 327 in case of *Kerala Samsthana Chethu Thozhilali Union Vrs. State of Kerala and others*, GRIDCO has submitted that the Commission alone would decide whether GRIDCO should purchase power from MTPS Stage-II of M/s. KBUNL irrespective of the tariff that is decided by the Hon'ble CERC for the said station. GRIDCO stated that

the PPA ought not to be approved by the Commission unless the tariff determined by the Hon'ble CERC is acceptable to the Commission and GRIDCO. This is essentially the intention of Rule 8 of the Electricity Rules, 2005 where the State Commission would proceed to exercise its power u/S. 86 (1) (b) to approve or disapprove the PPA having regard to the indicative tariff. If the indicative tariff is not reasonable, the State Commission would disapprove the PPA. In any case, the PPA can be effective only after the tariff has been fixed by the CERC. Therefore, unless and until the tariff is fixed by the CERC, the Commission cannot approve the PPA. The provision in Rule 8 of the Electricity Rules state that "*the State Commission may determine whether a distribution licensee in a State should enter into a PPA or procurement process with such a generating company based on the tariff determined by the Central Commission*" which pre-supposes the tariff of the power station is the basic ingredient for approval of PPA.

4. The power u/S. 62 (1) (a) and 86 (1) (b) of Electricity Act, 2003 conferred on the State Commission cannot in any manner be restricted or whittled down by way of allocation of power by Ministry of Power vide its letter dated 10.12.2010 (i.e. executive instruction or notification). In terms of Section 86 (1) (b), the term "regulation of electricity purchase" includes the power of the State Commission to allocate or de-allocate power supply from a generating station. In the BSES judgment (supra), Hon'ble APTEL has clearly stated that the executive instruction through tariff policy cannot override the provision of Section 62 and 63 of the Act. Hence, following the law laid down in the BSES case, the allocation of power by the Ministry of Power, Govt. of India cannot override the powers of the Commission under Section 86 (1) (b) of the Act.
5. GRIDCO has further stated that in the present case the PPA dated 27.12.2010 has not yet been approved by OERC u/S. 86 (1) (b) of the Electricity Act, 2003. In absence of such approval, even if the parties implement the said PPA, any action under the PPA would be ex-facie ultra vires Section 86 (1) (e) of the Electricity Act, 2003 and thus unlawful. It would also severely undermine the powers and functions of the State Commission under the 2003 Act. In a number of judgments rendered by Hon'ble APTEL it has been held that a PPA/concluded contract could be re-opened by the Regulatory Commission. The following judgments of its Hon'ble Tribunal are being relied upon:-

- i. Gujarat Urja Vikas Nigam Ltd. Vrs. TADAS Wind Energy Pvt. Ltd. & Others (Appeal Nos. 198, 199, 200, 291 of 2014)
- ii. Junagadh Power Project Pvt. Ltd. Vrs. Gujarat Urja Vikas Nigam Ltd. & Others (Appeal NOs. 132 of 2012 and 133 of 2012)
- iii. Rithwik Energy Systems Ltd. Vrs. Transmission Corporation of Andhra Pradesh & Others (Appeal No. 90 of 2006)
- iv. Tamil Nadu Generation and Distribution Corporation Ltd. Vrs. Penna Electricity Ltd. & Others (Appeal No. 112 of 2012)
- v. GVK (Goindwal Sahib) Ltd. Vrs. Punjab State Electricity Regulatory Commission (Appeal No. 70 of 2009)

Thus, if the State Commission has the power to re-open signed PPAs then surely the State Commission has the power to reject the PPA. The power to modify, alter or vary the terms of agreement would carry with it the power to disapprove the agreement, if the circumstances so justified.

6. The contention of GRIDCO is only to bring to the notice of the Commission the changed circumstances the power plant has undergone i.e. delay in its commissioning, cost overruns etc. which require disapproval of the PPA. Therefore, if the Commission decides that GRIDCO shall not purchase power from MTPS Stage-II in view of the interest of the State consumers, then the PPA dated 27.12.2010 would stand disapproved notwithstanding allocation of power by the MoP, GoI vide its letter dated 10.12.2010.
7. GRIDCO has further submitted a decision of the Hon'ble Supreme Court in the case of M/s. Tata Power Co. Ltd. and Reliance Energy Ltd., (2009) 16 SCC 659, where Hon'ble Apex Court has held that *"83..... The 2003 Act encourages free generation and more and more competition amongst the generating companies and the other licensee so as to achieve customer satisfaction and equitable distribution of electricity....."* Therefore, the allocation of power from MTPS Stage-II, despite its high cost, would defeat the competition amongst the generating companies and contrary to the aforesaid judgment of the Hon'ble Apex Court. Hence, the Commission while rendering its decision on the said PPA dated 27.12.2010 has to look into the public interest and the fairness of the terms of PPA.
8. Regarding scheduling of power from MSTP Stage-II, GRIDCO has submitted that during the period in question SLDC has scheduled power for all the DISCOMs of

Odisha following Merit Order Despatch (MOD) principles as prescribed in law subject to factors such as grid security, technical minimum limit of generating plants, the requirements of the other licensees from a particular plant, transmission constraints etc. The applicant GRIDCO/DISCOMs have always followed the directions of SLDC which is statutory in nature as per mandate of Electricity Act, 2003 and the Regulations framed thereunder. GRIDCO has stated that though GRIDCO/DISCOMs may not have need for power but the same is still being scheduled at the instance of RLDC through SLDC, which has been done by RLDC for maintaining grid security and stability. This has been done not as per MOD principles. Therefore, the power from the NTPC stations has been forcibly scheduled to the applicant / DISCOMs. If such scheduling has been done by SLDC/RLDC, then schedule given by the applicant/DISCOMs or the demand/requirement of DISCOMs does not have any significance.

9. Regarding the issue of liability to pay transmission charges in case of drawal of power from MTPS Stage-II. GRIDCO has stated that in the present case it is not an issue whether transmission charges based on deemed LTA is payable or not. Unless and until the PPA is approved u/S. 86 (1) (b) of the Electricity Act, 2003, there cannot be deemed allocation of capacity in the transmission system. However, the present case concerns allocation of power and approval of PPA which has public interest involved in it. Hence, even though assuming without admitting that CTU charges are payable irrespective of surrender of power, the same does not act as a bar to the jurisdiction of the Commission to decide the issue.
10. GRIDCO has stated that the two nos. of generating units of MTPS Stage-II have been declared under commercial operation w.e.f. 18.03.2017 and 01.07.2017 respectively. Non-commissioning of said project within a reasonable time from the date of execution of PPA in the year 2010, tantamount to fundamental breach of obligations of the respondent under the said PPA. The delay in commissioning of the said projects has disturbed the basic assumptions of agreeing to the adhoc tariff determined at the time of signing of PPA. Further, the cost of construction of the generating station and capital cost would undergo drastic changes. An average per MW cost would increase many fold since the time of entering into the PPA. Through this delay the foundation of PPA has been lost. The performance envisaged now in effect is that of a different contract for which the parties have not agreed. Therefore, the sale and purchase of power from the aforesaid generating station of Respondent for which the PPA was entered into way back in the year 2010 would result in performance of obligations which are

significantly different from the obligation entered at the time of entering into the PPA. In view of the above, GRIDCO has submitted that the PPA conditions have been breached by the Respondent, therefore, GRIDCO is discharged from the obligations of such breached PPA.

11. GRIDCO further submitted that the petitioner had waited for many years for procurement of power at economical rate from the Respondent, but due to the inordinate and unexplained delay in the commissioning of the above said generating station, the petitioner had no option but to make alternate arrangements to meet its statutory obligations of supplying power to the DISCOMs for meeting the power requirement of the State. Since, the aforesaid project admittedly could not be commissioned within a reasonable time after execution of PPA, the petitioner must be allowed to exit out of the PPA. In the event, the petitioner is directed to buy power from the delayed projects of the Respondent, then there will be grave harm, irreparable loss to the petitioner for no fault of it, which will have to be passed on to the consumers of the State in the form of higher retail tariff.
12. GRIDCO further stated that if the petitioner procures power from the MTPS Stage-II, it would pay a much higher rate for procurement of such power as compared to other sources and from the exchanges. The PPA will come into effect only after obtaining the consent of the State Commission. The PPA being statutory contract any way cannot be held as valid and subsisting till it is finally approved by the State Commission.
13. In summary, the petitioner GRIDCO has prayed the Commission to discharge it from buying power from the aforesaid projects of the Respondent in view of the above position of law and the submissions made herein.
14. The Respondent, M/s. KBUNL has submitted that, KBUNL and GRIDCO entered into a Power Purchase Agreement on 27.12.2010 for the sale and purchase of 30 MW electricity from its 2x 195 MW Muzaffarpur Thermal Power Station (Stage-II). The allocation letter dated 10.12.2010 issued by Ministry of Power, Govt. of India shall form an integral part of the PPA. GRIDCO had agreed to off take 30 MW of contracted capacity from the Generating Station for a period of 25 years from the date of commercial operation of the station at the tariff terms and conditions to be determined by the Central Commission or such other competent authority, from time to time. This agreement can be specifically extended on mutually agreed terms.
15. M/s. KBUNL has submitted that in the year 2011 GRIDCO filed a petition before this Commission in Case no.43 of 2011 for the approval of fourteen (14) numbers of Power

Purchase Agreements entered into with NTPC and its Joint Ventures (including KBUNL). The Commission vide its Interim Order dated 16.08.2011 in Case No.43 of 2011 had directed as under:

- “6. However, we allow time upto 31.08.2011 to Govt. of Odisha and DISCOMs to file their replies. We direct issue of fresh notice to NTPC, Ministry of Power, GoI and Reliance Managed DISCOMs to file their replies.*
- 7. GRIDCO is directed to furnish its views on the above issues before 25.8.2011. GRIDCO may discuss the above issues with the State Govt. and their Board for finalization of their views to take up with NTPC in the PPA.”*
16. GRIDCO had prayed for three months time before the Commission to submit its views in compliance with the above interim order dated 16.08.2011. But no submission had been made by GRIDCO. Therefore, the Commission vide its letter no.703 dated 26.05.2016 intimated the parties concerned to comply with the observations/directions of the Commission in its interim order dated 16.8.2011, failing which the Commission will dispose of the matter based on the documents available in the records. In the absence of the submission from GRIDCO, the Commission disposed of the Petition in Case no. 43 of 2011 with the following observations:

*“..... But no submission has been made by any of the concerned parties including the petitioner GRIDCO Ltd. till date. This is unexpected from a state entity like GRIDCO Ltd. and speaks of lack of responsibility.*

*5. In view of the above, the Commission would like to dispose of the present case and directs the petitioner GRIDCO Ltd. to make fresh submission of individual PPA separately in respect of each of the upcoming Inter-State Generating station in the eastern region after incorporating the issues observed/directed by the Commission in its interim order dated 16.8.2011 passed in present case within three months”.*
17. M/s. KBUNL submitted that GRIDCO cannot seek to take an advantage of its own wrong, namely the delay in obtaining approval from this Commission. GRIDCO had signed the PPA with M/s. KBUNL without any reservation or condition. Based on the PPA, it was for GRIDCO to have applied for and obtained all the necessary approvals from the Commission in regard to the procurement of power.
18. Although GRIDCO was directed by the Commission in its order dated 20.07.2016 to file a fresh Petition within three months, the present Petition was filed only in April, 2018, namely after a delay of about 1.5 years. However, M/s. KBUNL filed a Petition No.74/GT/2017 dated 14.03.2017 before the CERC for approval of tariff of the Generating Station from the date commercial operation of Unit-1 to 31.3.2019. Further, M/s. KBUNL filed another Petition No.20/MP/2017 before the Central Commission seeking directions in respect of the operationalization of the Long Term Open Access (LTOA) for the beneficiaries of the Generating Station and the Central Commission



vide its order dated 09.03.2018 held that the Central Government allocatees are deemed LTOA users and are bound by their obligations under their respective PPAs. The relevant extracts of the order read as under:

“27. XXXXX The Petitioner has performed its part of the contractual obligations under the PPAs and therefore, it is incumbent upon the beneficiaries to perform their part of the contractual obligations to enter into LTA Agreement and pay the transmission charges in proportion to their shares. Jharkhand has already entered into LTA with CTU. However, GRIDCO, WEBSUEDCL and DVC have not signed the LTA agreement as they have approached Ministry of Power, Govt. of India for de-allocation of their shares from MSTs Stage II. The basis for the application and grant of LTA is the PPAs signed by the beneficiaries with the Petitioner and the basis of the PPAs is the allocation by Government of India, Ministry of Power. Unless and until the allocation of power in favour of particular beneficiaries is rescinded by the Ministry of Power, the PPAs shall subsist and the concerned beneficiaries shall be liable to comply with the provisions of the PPAs including their obligations to sign the LTA Agreement and liability to pay the transmission charges. The beneficiaries do not have any option to unilaterally abandon the PPAs and their obligations there under.”

“30. XXXXXX In case, the share of any beneficiary has been re-allocated by Government of India, Ministry of Power, then the concerned beneficiary shall be relieved from its obligations under the LTA Agreement from the date of re-allocation coming into effect. The new beneficiaries shall have to enter into LTA Agreement within a reasonable time not later than the date of coming into effect of the reallocation of power. If the said beneficiary fails to enter into LTA Agreement by the stipulated date, PGCIL shall operationalise the LTA and the said beneficiary shall be required bear the transmission charges proportionate to its share in the capacity of the generating station.”

19. M/s. KBUNL has submitted that, GRIDCO in the aforesaid Petition No.74/GT/2017, had filed its response before the Central Commission raising various objections on the merits of the claim made by M/s. KBUNL as regards the time over-run and the cost over-run. But GRIDCO had not raised any issue regarding its obligations to off take the power, including any plea that any such obligation shall be subject to the approval of PPA by this Commission.
20. M/s. KBUNL submitted the inaction and the undue delay on the part of GRIDCO in approaching this Commission for the approval of the power procurement process cannot deprive M/s. KBUNL of its rights, particularly when it was at the request of the State of Odisha/OSB/GRIDCO that the Central Government had allocated power from the Muzaffarpur Thermal Power Station Stage II. The nature and status of the Central Government allocation has been recognized by the Central Commission in its Order dated 09.03.2018 in the case of *Kanti Bijlee Utpadan Nigam Limited vrs. Central Transmission Utility and Others* (Petition No. 20/MP/2017).

21. A beneficiary (including GRIDCO) is bound by the provisions of the PPA read with the Government of India allocation, unless the contracted capacity stands surrendered and re-allocated by the Government of India. The allocation by the Central Government is a process of equitable distribution of capacity available in the Central Public Sector Stations amongst the various States. These are in furtherance to meet the power requirement of different States and State utilities. There was no compulsion for GRIDCO or for that matter, the State of Odisha to have approached the Ministry of Power for such allocation or otherwise, when the Ministry of Power had proposed the capacity in the various generating stations including the power project of M/s. KBUNL. It is not open for GRIDCO to fail in its obligations under the PPA and its conditions of license, namely to obtain the PPA approval at the relevant time and unduly delay the proceedings by more than 6 years and yet seek to take an advantage of its own wrong, to the detriment of M/s. KBUNL, by denying it its legitimate costs.
22. It was on the basis of the commitment of the beneficiaries identified by the Government of India (including GRIDCO) to purchase power, M/s. KBUNL proceeded to invest substantially in setting up of the Generating Station. In the absence of such firm commitment from GRIDCO and others for the aggregate capacity, M/s. KBUNL would not have borrowed funds and infused its own equity in developing and constructing the Muzaffarpur Thermal Power Project - Stage II. In such circumstances, now the beneficiary cannot unilaterally rescind its obligations under the PPA.
23. M/s. KBUNL has stated that GRIDCO is a party to the tariff proceedings pending before the Central Commission in Petition No.74/GT /2017 and it is open for GRIDCO to raise its objections regarding the tariff before the Central Commission for consideration along with the issue of delay in the commissioning of the generating units. The Central Commission will, after considering the submissions of all the beneficiaries / procurers including GRIDCO, determine whether the time overrun and/or cost overrun should be allowed in the tariff or not depending upon whether the delay was on account of/attribution to M/s. KBUNL. In case it is found that the delay was for reasons attributable to M/s. KBUNL, it will not be a pass through in tariff.
24. M/s. KBUNL has further submitted that, it does not dispute the jurisdiction of this Commission under Section 86(1) (b) of the Electricity Act, 2003 to decide on the power procurement of GRIDCO. But the function provided under this section is not simply to approve a PPA, if so desired by the Licensees or otherwise allow the Licensees to implement or interdict the implementation of a PPA or power procurement process at

- its whims and fancies. If GRIDCO had proceeded to sign the PPA based on the allocation of the power by the Central Government and based there on, NTPC had undertaken the establishment of the power plant, it is not open to GRIDCO to change its position subsequently. The matter had to be judged as at the time of signing the PPA.
25. A beneficiary is bound by the provisions of the PPA read with the Government of India allocation, unless the contracted capacity stands surrendered and re-allocated by the Government of India. Accordingly, GRIDCO is not remediless and has an appropriate legal remedy in case it is desirous of opting out of the PPA dated 27.12.2010 i.e. to approach the Central Government for re-allocation of power.
  26. There is thus, no dispute on the issue that the power stands surrendered only when the Central Government finds an alternative buyer willing to offtake electricity at the same tariff terms and conditions. Even in the present case, the other beneficiaries of the Generating Station Such as DVC and WBSEDCL have taken up the matter for surrender of power with the Central Government. Until the power is re-allocated in favour of an alternate buyer, DVC and WBSEDCL are continuing to abide by the obligations under the PPA and are paying the deemed fixed charges to the extent of their allocated capacity.
  27. M/s. KBUNL has stated that it will be disastrous and self defeating if the procurers are allowed to terminate the PPA at this stage and leave the generator in lurch. Then no generator would be incentivized to set up the power project for a high capacity involving huge investment of about Rs.5 to 6 Cr/MW. Such a course would scuttle the infrastructure industry and be against public interest. This is particularly when GRIDCO did not raise any protest or reservation for a period of 8 years and is now attempting to resile from its obligations belatedly. In such circumstances, M/s. KBUNL has prayed before the Commission to accord approval to the power purchase by GRIDCO in terms of the PPA dtd. 27.12.2010 entered into with it.
  28. Heard the parties. Their written notes of submission are taken into consideration. The Commission observes that GRIDCO has entered into a PPA with M/s. Kanti Bijlee Utpadan Nigam Ltd. (KBUNL) on 27.12.2010 to purchase power from its Muzaffarpur Thermal Power Station Stage-II, as per the allocation made by MoP, GoI. The MoP, GoI vide its letter dated 10.12.2010 has allocated 30 MW power out of the total installed capacity of 390 MW (2 x 195 MW). The Unit-I and Unit-II of this power station have been declared under commercial operation with effect from 18.03.2017 and 01.07.2017 respectively. The petitioner GRIDCO has submitted that keeping in view

the power requirement of the state at that period and then projected future requirement, it had entered into a PPA with M/s. KBUNL. But due to delay in commissioning of the power station there has been cost and time overrun resulting in escalated tariff. GRIDCO has submitted that as per the tariff petition filed before CERC by M/s. KBUNL, the proposed tariff is 514.90 p/u (fixed cost- 276.36 p/u and variable cost- 238.54 p/u). GRIDCO has stated that as per the new guideline of MoP, GoI the home state share of NTPC stations have been increased from 10% to 50%. Accordingly, GRIDCO has to purchase 50% power from NTPC Super Thermal Stations at Darlipalli in Sundargarh district of Odisha having installed capacity of 1600 MW and Talcher expansion projects in Odisha. On account of such upward revision of home state share along with commissioning of the IPPs in the state and subdued demand growth in the state, GRIDCO is now poised to be a net surplus state. GRIDCO has further submitted that now it has much surplus power for which the Commission in their tariff orders are not allowing drawal of high cost NTPC power from many of their power stations.

29. The Commission in the tariff order of GRIDCO for the FY 2018-19, had estimated surplus availability of 2173.74 MU and therefore not allowed drawal of high cost energy from Farakka STPS-III and allowed part drawal from Farakka STPS-I & II. But full fixed cost was allowed. Similarly, in the tariff order of GRIDCO for the FY 2019-20, the Commission had estimated surplus availability of 5315.78 MU and not allowed drawal of high cost energy from Farakka STPS-III and Kahalgaon STPS-I, but full fixed cost was allowed. Further, in the tariff order of GRIDCO for the FY 2020-21, the Commission had estimated surplus availability of 5941.37 MU, not allowed drawal of high cost energy from Farakka STPS-I & II, Farakka STPS-III, Kahalgaon STPS-I and Kahalgaon STPS-II and allowed part drawal from Talcher STPS-I. Full fixed cost was not allowed except Talcher STPS-I. The Commission further observed that in the mean time OPGC Stage-II (3<sup>rd</sup> & 4<sup>th</sup> units) and Darlipalli STPS of NTPC have been commissioned and consequently quantum of surplus energy would increase to a large extent till phasing out of existing old thermal generating stations. This will result in a huge amount of redundant fixed charge burden on GRIDCO with drawal of a very low quantum of energy or no energy from these thermal power stations. In the meantime, CERC has brought out their tariff order for M/s. KBUNL for the control period 2014-19 in Petition No. 74/GT/2017 on 29.04.2019. As per the bill raised by M/s. KBUNL it is seen that in FY 2020-21 they have charged a fixed cost (capacity charge) of Rs.2.74 per unit and energy charge of Rs.2.64 per unit for GRIDCO which amounts to Rs.5.38 per unit. In addition, the transmission charges and year-end charges will also have to be

paid. This is in sharp contrast to the approval of the Commission for marginal power purchase cost of Rs.3.13 per unit from TSTPS-I in the same year. This means GRIDCO had to pay the fixed cost for the costlier power of M/s. KBUNL without any drawal. GRIDCO has also brought before the Commission the fact that 35.42 MU has been forcibly scheduled from M/s. KBUNL to GRIDCO without being asked for. Since GRIDCO has turned power surplus in the meantime, the Commission has consistently allowed GRIDCO to trade surplus power. The unwarranted power from the Respondent would create an unviable situation for GRIDCO which would not be able to sell the same to any other party. The Commission considering the surplus situation had asked GRIDCO to surrender the allocation from Barh STPS-II power station without approving the PPA. Accordingly, GRIDCO had taken steps resulting in de-allocation of such power by MoP vide their allocation order dated 19.02.2019.

30. The machines of the Respondent were commissioned in the year 2017 after approximately six years of signing of the PPA. The power demand depends on various factors which is always dynamic. Long term forecasting is a difficult proposition. In that event GRIDCO could not have forecast its demand after six years. Had the Respondent completed the project in time this eventuality would not have arisen and GRIDCO could have re-adjusted its power procurement plan accordingly.
31. The Commission further observed that since GRIDCO is not able to meet the RPO, it has entered into PPA with many renewable developers as well as with SECI and PTC to purchase renewable energy (both solar and non-solar) in order to meet its RPO. GRIDCO is still far behind its RPO target fixed by the Commission and it needs procurement of more renewable energy for meeting the RPO. Consequently, availability of surplus power will further increase resulting in a huge burden of fixed charge of the NTPC generating stations on the state consumers.
32. As per Section 86(1)(b) of Electricity Act, 2003 the State Commission shall have to *“regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state.”*
33. Considering all the above we are not inclined to approve the present PPA with M/s. KBUNL and direct GRIDCO to take steps for de-allocation of State share from M/s. KBUNL in co-ordination with the State Government. This will relieve the State consumer from bearing the unnecessary burden of the fixed cost of power which is not

being drawn. Regarding force scheduling of power GRIDCO may approach appropriate forum for relief.

34. Accordingly, the case is disposed of.

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(U. N. Behera)**  
**Chairperson**