

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

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

Case No. 35/2018

OPGC Ltd.	Petitioner
Vrs.		
GRIDCO Limited & another	Respondents

In the matter of: **An application under Section 86(1)(f) of the Electricity Act, 2003 for resolution of dispute between GRIDCO Ltd, CESU and the applicant regarding restoration of power supply to its 2x250kW Mini Hydel Plant at Kendupatna of OPGC Ltd. and also for release of payment by GRIDCO Ltd. towards power supply from the renewable Mini-Micro Hydro Project of OPGC Ltd.**

For Petitioner: Shri Bibhu Charan Swain, the authorized representative on behalf of M/s. OPGC Ltd., Shri Subhendu Kumar Mohanty, Manager, M/s. OPGC Ltd.

For Respondent: Shri S. S. Nayak, Sr. GM (PP), GRIDCO Ltd., Ms. Sasmita Patra, Manager (RE), GRIDCO Ltd. and Shri Nabin Kumar Mishra, Manager (RA), CESU.

ORDER

Date of hearing: 07.08.2018

Date of order: 05.01.2019

The petitioner M/s. Odisha Power Generation Corporation Limited (OPGC Ltd.) has filed this petition for resolution of disputes between the GRIDCO, CESU & OPGC in respect of its Mini Hydel Projects (MHPs) situated at Kendupatana and Biribati.

2. The petitioner M/s. OPGC Ltd. has submitted that two of their MHPs, one of 500 KW (2x250 KW) at Kendupatana having annual design energy of 0.644 MU with an initial project cost of Rs.285.16 Lakhs and another of 650 KW (2x325 KW) at Biribati having annual design energy of 1.170 MU with an initial project cost of Rs.266.12 Lakhs, were made operational in the year 1994 and had been supplying power to erstwhile OSEB and subsequently to GRIDCO through 11 KV network till September, 1999. As both OPGC and OSEB were under Govt. of Odisha, power evacuation was continuing as per mutual understanding without signing of PPA and

also no payment was made to OPGC by OSEB. In the year 1999 both the MHPs were badly damaged due to Super Cyclone and remained under break down till September, 2007. In 2007, OPGC revived the MHPs by investing an amount of Rs.17.82 Lakhs at Kendupatana and Rs.19.26 Lakhs at Biribati. Since then both the MHPs have been running seasonally for the period from July to November in a year and entire power is being evacuated to the State Grid through 11 KV CESU network for supply to GRIDCO.

3. The petitioner has further submitted that net energy exported by both the MHPs was 1172356 KWh (1733143 KWh exported and 560787 KWh imported) from the month of January, 1994 to November, 1998. Since there was no clarity initially, OPGC raised energy bills to CESU and CESU referred the matter to GRIDCO. After obtaining approval of its Board of Directors, GRIDCO made payment of Rs.11,72,356/- to OPGC on 12.08.2010 towards the supply of 1172356 KWh on net export basis at the tariff of Rs.1/- per KWh as was decided on mutual understanding. However, after 2007 when both the MHPs were revived and put into operation, the energy bills raised on GRIDCO were not accepted by it and GRIDCO informed that PPA is required to be signed between OPGC and GRIDCO. Since 2013 OPGC pursued with GRIDCO for settlement of bills and execution of PPA and also submitted a draft PPA to GRIDCO in December, 2014. The Petitioner submitted that after lot of persuasions, GRIDCO and CESU discussed the matter of draft PPA on 19.03.2016 with OPGC after which the representatives of OPGC and GRIDCO signed the Minutes of Meeting (MoM), but CESU insisted for insertion of an additional clause that all the energy bills payable by OPGC to CESU for self consumption in both the MHPs from 2007 onwards shall be paid to CESU before execution of PPA between OPGC and GRIDCO. OPGC did not agree to this proposal because it has to receive more amounts towards export of energy which could be settled simultaneously. Subsequently on 28.04.2017 CESU served a notice to Kendupatana MHP to clear the outstanding dues of Rs.16,29,959/- within 15 days otherwise the electricity supply would be disconnected without any further notice. The Petitioner OPGC stated that this claim of CESU was based on General Purpose (GP) tariff without netting the same with exported power to GRIDCO. As per the calculation of OPGC, total claim of OPGC in respect of Kendupatana MHP is around Rs. 57.78 Lakhs on net export basis for the period from 2007-08 to 2017-18, which is much less

than the claim of CESU. OPGC officials requested the Executive Engineer, Salepur Division, CESU not to disconnect the power supply unilaterally in order to save the plant machineries and equipments. But CESU disconnected the power supply to Kendupatana MHP on 24.01.2018 for default of payment of electricity dues to CESU without any further notice.

4. OPGC further submitted that the draft PPA has been shared with GRIDCO but the same is yet to be signed by the concerned parties. As per the prevailing practice, the state generators bill to GRIDCO on net export basis and GRIDCO pays accordingly. In the same principle energy has been billed to GRIDCO from 1994 to 1998 and payment has been made by GRIDCO.
5. In view of the above, the petitioner OPGC has prayed the Commission to direct CESU for immediate restoration of power supply to the Kendupatana MHP and also direct GRIDCO to sign the PPA at the earliest with modification of Clause 7 of the draft PPA which deals with billing and release the payment to OPGC towards supply of its power for the period from 2007 till date. OPGC further prayed the Commission to pass a higher generic tariff for MHPs for 3rd control period starting from 2018-19 which shall be applicable to OPGC.
6. In its rejoinder, the petitioner has submitted that a meeting was held between GRIDCO, CESU and OPGC on 4.08.2018 on the direction of the Commission in its interim order where CESU and GRIDCO have agreed that future and prospective future transaction between OPGC and GRIDCO would be treated as deemed sale on the basis of net export.
7. Therefore, OPGC prays the Commission to adopt the same practice of power transaction based on net export basis for the period from 2007-08 onwards. The petitioner further prays that their design energy should be reduced since they are operating at low PLF resulting from less flow of water in the canal. Due to higher O&M cost, lower generation, the cost of generation of these MHPs are higher which comes around Rs.11.08/unit for the period from 2007-08 to 2017-18. Hence, OPGC prays the Commission to determine the project specific tariff for these two MHPs considering above facts and past cost data. Alternatively, the petitioner prays that generic tariff of Small Hydro Projects for the 3rd control period be applicable for the subject MHPs as PPA is expected to be signed with GRIDCO in the current year

2018-19. OPGC has further submitted that DoE, GoO vide its Letter No-1283 dated 02.02.1998 has prescribed the rate of Small Mini and Micro Hydel Plants at Rs.2.25/KWh (1994 price) to be escalated at the rate of 5% per annum for power to be purchased by GRIDCO, which may also be considered for the subject MHPs of OPGC as third alternative.

8. The Respondent-CESU has submitted that the MHP units at Kendupatana and Biribati are the consumers of CESU under SED, Salepur, Cuttack and CDD-II, Cuttack respectively. The relationship between CESU and the consumers is governed by the terms and conditions of OERC (Conditions of Supply) Code, 2004 as amended from time to time as well as the agreement executed between CESU and the consumer. When there was no generation by the said MHP units of OPGC they availed power from CESU and CESU served bills to them as per GPS tariff. Due to non-payment of dues power supply to Kendupatana unit was severed on 24.01.2018 under Section 56 (1) of the Electricity Act, 2003 by RUPL, the authorised distribution franchisee of CESU. There is no dispute in the present bill as the bills were raised on the basis of meter reading obtained from export-import meter installed at the MHP units. Further, the individual grievances of the consumer may not be adjudicated at the level of SERC, hence the present disputes before the Commission is not maintainable.
9. CESU further submitted that since GRIDCO has been declared as the state designated entity to purchase power from all sources, it is the responsibility of OPGC to enter into PPA with GRIDCO and CESU is not liable to pay the dues of generators. Further, CESU is no way connected for delay in signing of the PPA between GRIDCO and OPGC. In absence of PPA, GRIDCO cannot bill CESU for the power injected by OPGC to CESU system.
10. CESU further submitted that under Section 95 of the Electricity Act, 2003 all proceedings before the appropriate Commission shall be deemed to be judicial proceedings and the adjudication process under Section 86 (1) (f) of the Electricity Act, 2003 got trapping of Civil Courts. Therefore, the stale claims which is not maintainable before a Civil Court cannot be maintainable before the Commission. Therefore, in absence of PPA, which is a statutory requirement for sale and its modus operandi GRIDCO cannot insist payment from CESU for power injected by OPGC.

11. In view of the above, the Respondent-CESU submitted that the Commission may not adjudicate the billing disputes between the MHP consumers and the licensee CESU, as the said disputes does not fall within the ambit of Section 86 (1) (f) of the Electricity Act, 2003 and the petitioner may be directed with liberty to move the appropriate forum under the said Act. The Commission may direct the petitioner to pay the electricity dues raised by CESU and also direct GRIDCO not to raise any BSP bill of those prior periods to CESU as there was no valid PPA.
12. The Respondent GRIDCO has submitted that as requested by the petitioner, several meetings were conducted between GRIDCO and OPGC in presence of the representatives CESU, but the tariff for purchase of power from the subject MHPs could not be agreed upon. However, GRIDCO is of the view that PPA executed will be prospective in nature. In absence of any tariff, PPA for these two MHPs for the prospective 11 years (out of 35 years of life period, 24 years have been passed as the MHPs were commissioned in 1994) could not be executed. CESU has raised bills to OPGC for supplying start-up and back-up power to the plants during non-generation period. In all the meetings, CESU was of the view that for the pre-PPA period, OPGC is to settle the dues of CESU which should be the pre-condition for signing of PPA with OPGC.
13. GRIDCO further submitted that the two subject MHPs are very old plants and operating with a lower PLF of less than 5% (around 2%) and at any time they may be technically unfit for operation due to lack of proper O&M by the petitioner. Though the petitioner is requesting for signing of PPA after a gap of 24 years, it has failed to submit the fitness to operate document which should be submitted to GRIDCO before signing any commercial agreement. Further, as per the request of the petitioner, project specific tariff cannot be considered for these two MHPs as only 11 years of life period is left and tariff burden cannot be levied to a limited period. Again, as prayed by the petitioner, generic tariff for MHPs for the 3rd control period (from FY 2018-19 onwards) cannot be adopted for these two projects as these are very old plants and generic tariff on new norms and parameters are applicable for the plants commissioned during the 3rd control period only.
14. GRIDCO further submitted that as per the Minutes of Meeting between GRIDCO, CESU and OPGC dated 04.08.2018 in presence of Director (RA), OERC , the claim of OPGC for the pre-PPA period may be considered as per the already settled period

upto 1999 i.e. upto the damages to these MHPs caused by the Super cyclone. The claim of OPGC for the period from FY 2007-08 onwards upto signing of PPA the settlement may be considered at Rupee 1 per KWh as already agreed between the parties for the period from 1994-1999 as both the settlements are similar in nature without any PPA. As per the MoM dated 04.08.2018, a tri-partite agreement will be executed between GRIDCO, CESU and OPGC and the tariff for purchase of power from the subject MHPs may be specified taking the cost data relating to the commissioning year and total life period of 35 years from the year 1994. In view of the above, GRIDCO has prayed the Commission to settle the pre-PPA period in similar manner as done before for the period from 1994-1999 and determine the tariff for the post-PPA period on the cost data of the commissioning year.

15. The parties were heard and their written notes of submission taken into records. In the present case, the Commission vide its interim order dated 19.07.2018 had directed the respondent-CESU to restore the power supply to the MHP of the petitioner at Kendupatana within two days in view of the theft of plant machineries and for the safety of the staff. Further, the Commission vide its interim order dated 01.08.2018 in the present case had directed OPGC and GRIDCO Ltd. to sit with Director (RA) OERC to sort out the disputed points in the draft PPA and submit the report through affidavit to the Commission. In the same order the Commission had further directed GRIDCO Ltd. to convene a meeting inviting CESU and OPGC Ltd. to settle the past arrear dues claimed by both of them. Accordingly, a meeting was held between GRIDCO, OPGC and CESU on 04.08.2018 at OERC in presence of Director (RA). In the said meeting the following points were disagreed and agreed by the parties.

“i. It is resolved that either of the two solutions given below can be adopted.

- (a) The transaction of power between generator and GRIDCO for the period 1994 to 1998 shall be done as per GRIDCO Board's Resolution (121st Board Meeting) dated 24th February 2009. The Power Generated by OPGC from Kendupatna and Biribati Mini Hydel Division and imported by them shall be done on Net Export basis from the period 2007 till signing of the PPA between OPGC, GRIDCO and CESU. The Net Export quantity for the Period from FY 2007-08 upto signing of PPA will be billed by GRIDCO to CESU and tariff is to be decided by the Commission*
- (b) Alternatively, Commission shall determine the tariff of the power exported to GRIDCO from FY 2007-08 till signing of PPA. It is suggested by CESU that OPGC shall pay to CESU as per bill claimed.*

- ii. *The PPA shall have prospective effect on Net Export basis and Tariff shall be determined by the Commission.*
 - iii. *As these mini hydel plants are treated as Must Run under OERC Regulations, therefore the daily scheduling is not feasible and hence scheduling clause shall be excluded from the PPA.*
 - iv. *Metering data shall be taken by OPTCL on monthly basis and Billing will be done as per the State Energy Accounting as done by SLDC / EBC based on actual meter reading on annual basis for the period from 1st April to 31st March. In absence of EBC data, JMR reading shall be adopted for billing. JMR shall be taken by CESU and OPGC till installation of Another Check Meter and start of reading taken by OPTCL.*
 - v. *Another Check Meter shall be installed by OPGC as per procedure in presence of CESU and OPTCL.*
 - vi. *Tripartite Agreement shall be signed between CESU, OPGC, and GRIDCO.”*
16. From the above agreement between parties it is settled that the transaction of power from the subject MHPs for the period from 1994 to 1999 (i.e. upto damage of the MHPs by the Super Cyclone) shall be done as per GRIDCO Board Resolution dated 24.02.2009. Therefore, the Commission will limit its views on settlement procedure from 2007 onwards. All the parties have agreed that it shall be done on net export basis both for pre and post PPA period.
17. This is a very old issue. Even Government order as mentioned in Para 7 cannot be applicable here since the same order has not been fully implemented by the entities who have been created as a result of reform in power sector. Only adoption of tariff prescribed in the same order leaving other pre-requisite is not justified.
18. Since it is a legacy issue the rules and regulations applicable at the time of re-commissioning of the unit during the year 2007-08 is required to be applicable. It is observed that had the mini generating unit been commissioned during a particular control period then generic tariff order of the Commission on pricing of renewable power for that control period would have been applicable. But the Commission started issuing generic tariff order of renewable power starting from the first control period i.e. FY 2010-11 to 2012-13. There was no specific order on pricing of renewable power when re-commissioned units came on stream in September, 2007. A similar case was dealt by the Commission in Case No. 03/2009 while deciding the tariff of Sunei Mini Hydel Station (110 KW) which was commissioned on 01.08.2007. The Commission allowed tariff of Rs.2.91/Kwh, Rs.2.83/kwh and Rs.2.76/Kwh for this project for year 2007-08, 2008-09 and 2009-10 respectively. In the same order the

Commission had directed GRIDCO that a detailed tariff calculation shall be made when policy guideline in this regard is finalised by the Commission. It is worthwhile to mention here that the same policy guideline came into force from FY 2010-11 onwards with the issuance of generic tariff order for first control period. Following above guidelines of the Commission in this case also the policy guideline of first control period shall be applicable. In generic tariff order for the first control period starting from FY 2010-11 the Commission in Case No. 37/2013 has decided a levelised tariff of Rs.3.91/Kwh for small hydro project below 5 MW capacity which will be applicable for entire tariff period i.e. entire life period in case of small hydel projects.

19. Therefore, the levelised tariff of Rs.3.91/Kwh shall be justifiably applicable here for both the units at Kendupatana and Biribati of 500 KW and 650 KW respectively from 2007-08 onwards both for pre and post PPA period. This tariff shall be applicable for net export of power to GRIDCO from both the units which will be billed by OPGC to GRIDCO and in turn GRIDCO shall bill the same to CESU at the BSP for the respective year. This netting of power has already been agreed by all the parties during their meeting at OERC. Therefore, there should not be any further dispute in this regard. Regarding the transactions from inception of the power plant till the year 1999 this shall be guided by Board Resolution of GRIDCO.
20. The Commission observe that the transaction of power shall be done on net export basis with effect from the FY 2007-08 onwards as agreed between the parties. Further, as agreed in the meeting on 04.08.2018, monthly meter readings shall be taken for transaction of power from these two MHPs and billing shall be made financial year wise. In case the export of power by the MHPs is more than their import then the MHPs shall raise bills on GRIDCO at the price decided in the above paragraph. If the quantum of imported power is more than the export, then CESU shall raise bills on the MHPs at GPS tariff. The Commission further observed that the power exported by the MHPs is being injected to CESU network and the same is treated as consumption in CESU area which is just reverse when the units become non-operational and at that time power is imported by the MHPs for its survival requirement. It is needless to mention here that in case the bill of CESU after annual adjustment remains unpaid then CESU is at liberty to proceed as per Regulation. GRIDCO being the state designated entity to purchase power from all sources for

state requirement, the exported power by the subject MHPs is to be treated as deemed sale to GRIDCO for utilisation of CESU. In such case the Commission do not consider the submission of CESU to levy wheeling charges on import of energy by the MHPs of OPGC from GRIDCO using the network of CESU as this principle is not applied when GRIDCO injects power to CESU at 33 KV end.

21. The Commission observed that in the meeting dated 04.08.2018 all the parties have agreed that as these MHPs are treated as must run under OERC Regulations, daily scheduling is not feasible for them. Hence, scheduling clause shall be excluded from the PPA. The Commission agree with this decision but in case of prolonged breakdown for more than a day it should be intimated to CESU. Basing on the above direction of the Commission, the Petitioner, GRIDCO and CESU should enter into a tripartite PPA and submit the same for our approval.
22. Accordingly, the case is disposed of.

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson