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. 63/2018

GRIDCO Ltd. ……… **Petitioner**

Vrs.

M/s. GMR Kamalanga Energy Ltd. & Others …....... **Respondents**

In the matter of: **An application under Section 86 of the Electricity Act, 2003 read with Section 21 of the OER Act, 1995 along with other enabling provisions for approval of the Revised PPA dated 04.01.2011, Supplementary PPA dated 08.02.2018 along with Amendment No.1 dated 08.08.2018 to the above Supplementary PPA executed between GRIDCO Ltd. and M/s. GMR Kamalanga Energy Ltd.**

For Petitioner: Shri S. S. Nayak, Sr. GM (PP), Shri P.K.Das, GM, GRIDCO Ltd.

For Respondents: S K Sahenawaj Ahamad, AGM, M/s. GKEL and Shri P. K. Mishra, CLD, SLDC are present. Nobody is present on behalf of DoE, GoO.

ORDER

Date of hearing: 15.01.2019 **Date of order:09.04.2019**

The petitioner GRIDCO has filed the application before this Commission seeking approval of revised Power Purchase Agreement (PPA) dated 04.01.2011, Supplemental PPA dated 08.02.2018 and amendment made on 08.08.2018 to the said supplemental PPA executed between GRIDCO Ltd. and M/s. GMR Kamalanga Energy Ltd. (M/s. GKEL)

2. The petitioner has submitted that M/s. GMR Energy Ltd. (M/s. GEL) had signed the Memorandum of Understanding (MoU) with Department of Energy, Govt. of Odisha on 09.06.2006 (Principal MoU) and accordingly GRIDCO had signed PPA with M/s GKEL on 28.09.2006. Subsequently M/s GKEL had signed Supplemental MoUs with DoE, GoO on 29.01.2009 to consider Rehabilitation and Resettlement Policy of the State Govt., on 20.08.2009 for change of name from M/s. GMR Energy Ltd. (M/s. GEL) to M/s. GMR Kamalanga Energy Ltd. (M/s. GKEL) and on 28.10.2010 for increase in the project capacity from 1000 MW to 1400 MW along with extension of validity of the original MoU. The Principal PPA was filed before this Commission for

approval which was registered as Case No. 36/2006 and the Commission vide its common order dated 20.08.2009 have directed GRIDCO to submit the amended PPAs of all the IPPs incorporating the provisions of State Thermal Policy and R&R Policy by 15.09.2009 for appropriate decision by the Commission. GRIDCO submitted that though the revised PPA was signed on 04.01.2011 with M/s. GKEL, the same could not be filed before the Commission with the sole intention of filing the same along with the PPAs to be executed with other 12 nos. of IPPs at one time.

3. GRIDCO Ltd. further submitted that in addition to execution of PPA for supply of power to GRIDCO, M/s. GKEL had signed agreements for supply of power to the Distribution Companies in Haryana through PTC and Bihar State Electricity Board through competitive bidding process. Hence it was decided by various judicial forum that the power project of M/s. GKEL is operating under the composite scheme for generation and sale of electricity in more than one State and hence CERC has the jurisdiction to determine the tariff of M/s. GKEL. Accordingly, CERC has pronounced the tariff of M/s. GKEL for the FY 2013-14 vide its order dated 12.11.2015 in petition No. 77/GT/2013.

4. M/s. GKEL has installed 3 nos. of generating units of 350 MW capacity which have been successfully operated commercially w.e.f. the dates viz. Unit-I – 30.04.2013, Unit-II – 12.11.2013 and Unit-III – 25.03.2014. At present, out of three units (3 x 350 MW) of M/s. GKEL in operation, the third unit, i.e. Unit-3 (350 MW) is connected to STU at Meramundali grid sub-station of OPTCL through 400 kV single circuit transmission line supplying contracted quantum of power to the petitioner GRIDCO and balance power is sold outside through Short-term Open Access. As per the revised PPA dated 04.01.2011 the relevant clause for State entitlement of power to be supplied to GRIDCO is as follows:

"The capacity allocated to GRIDCO shall be upto 25 (Twenty Five) percent of the installed capacity of the thermal power station as requisitioned by GRIDCO once in each 5 (five) year block period. GRIDCO shall at all times have the right to purchase on behalf of Govt. of Orissa upto 25% (Twenty Five Percent) of the power sent out from the Thermal Power Station excluding the quantum of power in excess of 80% Plant Load Factor and Infirm Power with variable cost. GRIDCO shall requisition the capacity upto (Twenty Five) percent six months prior to the commencement of each 5 year block period."

5. GRIDCO submitted that as per the aforesaid provision of PPA the contracted capacity of GRIDCO is 262.5 MW i.e. 25% of the total present installed capacity of 1050 MW and at the same time the entitlement also implies 25% of the power sent out from the power station, which depends on the availability of all the units in operation. In the meeting among GRIDCO, SLDC and M/s. GKEL held on 12.07.2017, the methodology for determination of PAFM / PAFY (percentage) with respect to availability of Unit-III

connected to STU have been agreed upon. Therefore, GRIDCO prayed that the said MoM dated 12.07.2017 may be treated as a part of the revised PPA dated 04.01.2011 w.e.f. April, 2017 till further revision of the revised PPA.

6. In the meantime, Ministry of Coal, Govt. of India have announced a new coal allocation policy namely “Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India” (SHAKTI Policy) on 22.05.2017 for the power sector for allocation of coal linkage by fading away the existing coal distribution policy. Subsequent thereto, Coal India Ltd. has formulated the scheme document dated 16.08.2017 for auction of coal linkages to IPPs having concluded long-term PPAs. In accordance with the SHAKTI Policy, the IPPs who have already concluded long-term PPA based on linkage coal are eligible to participate in the bidding process. The grant of coal from each source will be based on the discount offered on the existing tariff (in paise/kwh) for the balance period of the PPA. As per the Govt. of India guideline, the existing PPA is required to be amended or supplemented to pass on the aforesaid discount to the Procurer by adjustment from the bill raised there under and also required to be approved by Appropriate Commission, Amendment and Approval of the PPA is required to be obtained by the Procurer(s) as per the provisions of the PPA and relevant regulations there under. M/s GKEL has emerged as a successful bidder by Mahanadi Coal Field (MCL), Talcher and MCL (Ib Valley & Basundhara) for allocation of linkage coal of provisional linkage quantity.

7. As per the SHAKTI Policy, the discount offered by the generating companies would be adjusted from the gross amount of monthly bill to be raised under the PPA approved by the Appropriate Commission. M/s GKEL and GRIDCO have entered into a supplementary PPA dated 08.02.2018 to the revised PPA dated 04.01.2011 as per the provisions of SHAKTI Policy to pass on the discount to GRIDCO. CERC vide its order dt.21.02.2018 in petition No.41/MP/2018 have approved the said supplementary PPA. Based on the observations of CERC in this order, M/s GKEL & GRIDCO have agreed to amend certain provisions of the supplementary PPA dt.08.02.2018 and accordingly an amended supplementary PPA was entered into on 08.08.2018. Further, as per the MCL letter dated 06.06.2018 addressed to M/s. GKEL, the DISCOMs need to get approval of the respective SERCs regarding the amended / supplementary PPA within three months from date of signing of FSA for SHAKTI Coal linkage as per the direction of CERC. Therefore, GRIDCO has intimated MCL that it has initiated the process of getting approval of PPA by the Commission and requested MCL to continue the supply of coal quantity allocated under SHAKTI bidding, as non-supply of coal would directly impact the interest of the consumers of Odisha. In response to the GRIDCO’s request the Coal India Ltd. vide its letter dated 12.12.2018 extended the coal supply to M/s. GKEL till 10.02.2019.

8. GRIDCO has further submitted that with concurrent reading of Sections 86 and 79 of Electricity Act, 2003 it would be only the State Commission which would have jurisdiction to approve and regulate the 'agreements for purchase of power for distribution and supply within the State'. GRIDCO further submitted that even though CERC by its order dated 21.02.2018 in Petition No. 41/MP/2018 have approved the amendments to the PPAs to factor in the discount offered in the tariff for the coal linkage under SHAKTI Scheme, OERC does not lose its jurisdiction, which it correctly has in law, to approve any further amendments to the PPA.

9. In view of the above, GRIDCO has made the following prayers to the Commission:

   (a) To accord statutory approval to the Revised Power Purchase Agreement dated 04.01.2011, Supplementary Power Purchase Agreement dated 08.02.2018 and Amendment No. 1 (dated 08.08.2018) to the Supplementary Power Purchase Agreement dated 08.02.2018, executed between GRIDCO and M/s. GKEL.

   (b) To consider the MoM dated 12.07.2017 as a part of the Clause 2.2 of revised PPA dated 04.01.2011 effective from April, 2017 onwards till further revision of the revised PPA dated 04.01.2011.

   (c) To direct for utilisation of linkage coal and coal availed under 'SHAKTI Policy' by the Respondent GKEL to supply State entitlement of power/ contracted quantum of power to the Petitioner GRIDCO.

   (d) To accord approval of the present petition at an early date in view of the limited time allowed by Coal India Ltd.

10. The representative of M/s. GKEL (Respondent–1), stated that they have participated in the SHAKTI Coal Policy notified by the Ministry of Coal, Govt. of India vide letter dated 22.05.2017 and M/s. GKEL was declared as a successful bidder for allocation of coal for provisional link quantity. He further stated that M/s. GKEL and GRIDCO entered into a supplementary PPA dated 08.02.2018 to the revised PPA dated 04.01.2011 in accordance with the SHAKTI Scheme and the same has been approved by CERC vide its order dated 21.02.2018 passed in Petition No. 41/MP/2018. Further, GRIDCO and M/s. GKEL have agreed to amend certain provisions of the supplementary PPA dated 08.02.2018 and entered into Amendment No. 1 dated 08.08.2018 to said supplementary PPA. He has further submitted that on 12.07.2017 a meeting was held among GRIDCO, M/s. GKEL and SLDC to discuss the methodology of calculating plant availability factor for the month / year in respect of the power supplied by M/s. GKEL to GRIDCO. The methodology as agreed upon is incorporated in the Minutes of Meeting dated 12.07.2017 which has been filed by the petitioner. In view of the above M/s. GKEL has submitted that they have no objections to the reliefs prayed by the Petitioner and therefore, the Commission may decide the present petition accordingly.

11. The representative of SLDC, the Respondent -2 stated during the hearing that they have nothing more to say on the issue of approval of PPA executed between GRIDCO and M/s. GKEL.

12. Heard the parties and their written notes of submission are taken into records. The Commission observed that M/s. GKEL is operating under the composite scheme for generation and sale of electricity in more than one State. Therefore, CERC vide its common order dated 16.12.2013 passed in Petition No. 79/MP/2013 and 81/MP/2013 have upheld its jurisdiction to regulate the tariff of M/s. GKEL by virtue of Clause (b) of Sub-Section (1) of Section 79 of the Electricity Act, 2003 on the finding that the project is an inter-State generating station. The said order of the CERC has been upheld by Hon'ble APTEL vide their judgement dated 07.04.2016 and this judgement of Hon'ble APTEL has also been upheld by the Hon'ble Supreme Court of India vide their judgement dated 11.04.2017. However, in the meantime the CERC vide its order dated 12.11.2015 has pronounced the tariff order of the subject power station of M/s. GKEL for the FY 2013-14.

13. The Commission further observed that in accordance with the SHAKTI Policy notified by Ministry of Coal, Govt. of India vide letter dated 22.05.2017, IPP who have already concluded long term PPAs based on the domestic coal are eligible to participate in the bidding process and grant of coal from each source will be based on the discount quoted by the bidders on the existing tariff for the balance period of the PPA. As per the Para - B (ii) (b) of the said letter dated 22.05.2017, the existing PPA is required to be amended or supplemented to pass on the discount offered on the existing tariff to the Procurer by adjustment from the bills raised there under and it is also required to be approved by the appropriate Commission. Accordingly, GRIDCO and M/s. GKEL have entered into supplementary PPA dated 08.02.2018 to the revised PPA dated 04.01.2011 and CERC vide its order dated 21.02.2018 in Petition No. 41/MP/2018 have approved the said supplementary PPA. It is further observed that as per the letter dated 06.04.2018 of MCL, the DISCOMs need to get approval of the respective SERCs regarding the amended / supplementary PPA within 3 months from date of signing of FSA for SHAKTI Coal linkage as per the direction of CERC.

14. The Commission further observed that GRIDCO has cited Section 86 (1) (b) and Section 79 (1) (b) of the Electricity Act, 2003 in favour of its arguments that the approval of PPA by the State Commission is required for availing power supply from different sources for State use. Section 86 (1) (b) of the Electricity Act, 2003 that stipulates that *the State Commission shall discharge the functions 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.*

Section 79 (1) (b) of the Electricity Act, 2003 stipulates that *the Central Commission shall discharge the functions to regulate the tariff of generating companies other than* *those owned or controlled by the Central Government specified in Clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State.*

GRIDCO stated that concurrent reading of the above clauses of Electricity Act, 2003 implies that under Section 79 (1) (b), the Central Commission has the function to 'regulate the tariff' of a generating station having composite scheme for generation and sale of electricity in more than one State, however, the State Commission has to regulate electricity purchase and procurement process including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreement for purchase of power for distribution and supply within the State. Therefore, the approval of PPA for purchase of power by the State DISCOMs lies with State Commission. The Commission further observed that M/s. GKEL has no objections to the above submission made by GRIDCO. So, the Commission accepts the proposal of GRIDCO for approval of the PPA by the State Commission.

15. The Commission further observed that the procurer of power shall avail a discount in tariff for the coal linkage under SHAKTI Scheme of Govt. of India. Since GRIDCO is the 'State Designated Entity' for procurement of power from different generating sources to meet the State demand, the discount on account of availing coal linkage by M/s. GKEL under SHAKTI Scheme shall be offered to GRIDCO which will be beneficial to the consumers of Odisha.

16. In the present case the matter possibly got delayed as the PPA has been placed before us after CERC order in this regard on 21.02.2018. However, we find that sometimes the PPAs are placed before the Commission for approval after a lapse of considerable time from the date of its signing. When the matter is placed before the Commission for approval in some cases power drawal from the power stations might have already started. At times GRIDCO and the Generator do not agree on certain points in the PPA even while placing the matter before the Commission. This leads to avoidable disputes. Therefore, to obviate this type of situation GRIDCO should place the PPA as soon as it is signed with the Generator.

17. The State Government enters into MoU with prospective generator with certain conditions and while signing the PPA and it may not be possible on the part of GRIDCO to keep all the MoU conditions in the PPA due to operational issues. Therefore, in those cases GRIDCO should bring the matter to the knowledge of State Government before signing the PPA.

18. While entering into any new PPA, GRIDCO should take into account all the existing PPAs and future power demand of the State so that the capacity contracted does not remain idle. The renewable energy sources should be given due weightage depending upon their procurement plan as per Government Policy. The plan for meeting the power demand of the State should be economically evaluated before a new PPA is signed so that the dispatchable new generator shall find a place in the merit order of power procurement.

19. In view of the above, the Commission accord approval to the Revised PPA dated 04.01.2011 and the Supplementary PPA dated 08.02.2018 executed between GRIDCO and M/s. GKEL along with the amendments made on 08.08.2018 to the Supplementary PPA. Further, the Commission directs that the Minutes of Meeting held on 12.07.2017 among GRIDCO, M/s. GKEL and SLDC as dealt at Para 10 of this order on the issue of calculation of Plant Availability Factor shall be a part of the Clause 2.2 of revised PPA dated 04.01.2011 w.e.f. April, 2017. The Commission further directs that the linkage coal and the coal availed under 'SHAKTI Policy' by the Respondent M/s. GKEL shall be utilised for supply of State entitlement of power/ contracted quantum of power to GRIDCO and the discount offered on the existing tariff on account of SHAKTI Policy shall be passed on to the procurer - GRIDCO.

20. Accordingly, the case is disposed of.

Sd/-	Sd/-
(S. K. Parhi)	**(U. N. Behera)**
Member	**Chairperson**

Views of A K Das, Member, OERC

1. Heard the parties. Their written notes of submission are taken into records.

The present petition has been filed by GRIDCO where tariff has been determined by CERC under section 79(b) of Electricity Act, 2003 and the PPA is placed before this Commission for approval, under section 86(1)(b) of the Electricity Act, 2003. The relevant provision of the Act specifies as under:

"86(1)(b)

(1) The State Commission shall discharge the following functions, namely:

(a) xxxx xxxx xxxx xxxx

(b) 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;"

2. As per mandate above this State Commission is required to –

(a) Regulate Electricity purchase of the distribution Utility(s) for distribution and supply within the State

(b) Regulate procurement process of the distribution Utility(s) for the above

(c) Determine the price at which electricity shall be procured from the generating company or licensee or from other sources

(d) Oversee the above functions through approval of the agreement of power purchase (PPA) for distribution and supply within the State.

Each of the aspects mandated by the Act as above is looked into as follows:

3. A clear distinction between the role of Central Commission in determining tariff and role of State Commission in regulating purchase and process of electricity by Utilities while approving PPA has been analysed by Hon'ble APTEL in Appeal No.106 & 107 of 2009 judgment dt.31.03.2010 in the matter of BSES Rajdhani Power Limited Vrs. DERC at 16 as follows:-

"16. In terms of 86(1)(b), the <u>regulation of electricity purchase</u> and <u>procurement process</u> to distribution licensee including the price at which electricity shall be procured from generating companies through agreements for purchase of power for distribution and supply between the state is within the sole domain of the concerned State Commission." xxxxxx xxxxxx

This is in spite of the fact that the tariff has been decided by CERC, the role of State Commission in regulating the purchase by distribution Utility/Licensee for supply to state consumers is undisputed. It emerges that approval for power to be purchased by Licensee/Utility has to be obtained from State Commission by the Utility before supplying to state consumers.

4. The above order of Hon'ble APTEL has identified the two distinct fields of function on this, as carved out by legislature. One part is determination of tariff and the other part is approving PPA. In this case tariff has been determined by CERC under section 79(b) of Electricity Act, 2003.

5. Rule 8 of the Electricity Rules 2005 further clarifies above as under:

xxxxx xxxxxx xxxxxx xxxxx xxxxxx xxxxxx

"Sl.8. Tariff of generating companies u/s 79 – The tariff determined by the Central Commission for generating companies under clause (a) or (b) sub-section (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and ***subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission****.*

6. Further corroboration of this position of the State Commission has been upheld by Hon'ble Appex Court in Tata Power Co. Vrs. Reliance Energy Limited, (2009) 16 SCC 659 states as under:-

> *"87 .... The agreement of distribution (PPA) being subject to approval, indisputably the* ***Commission would have the public interest in mind. It has power to approve an MoU which subserves the public interest.*** *It, while granting such approval may also take into consideration the question as to* ***whether the terms to be agreed are fair and just****"*
>
> *"105. Section 86 provides for the* ***functions of the State Commission****, clause (a) of sub-section (1) whereof empowers it to determine the tariff for generation, supply, transmission and wheeling of electricity.* ***Clause (b) empowers it to regulate electricity purchase and procurement process of distribution licensees. Inevitably it speaks of PPA.*** *PPA may provide for* ***short term plan****, or* ***a long-term plan. Depending upon the tenure of the plan, the requirement of the distribution licensee vis-a-vis its consumers, the nature of supply and all other relevant considerations, approval thereof can be granted or refused".***
>
> *"108....* ***If the terms and conditions relating to quantity, price, mode of supply, the need of the distribution agency vis-a-vis the consumer, keeping in view its long-term need are not found to be reasonable, approval may not be granted".***

7. In the present case also the matter was also examined by superior courts on the issue of determination of tariff. Without much elaboration it can be stated that it is the responsibility of the State Commission to examine

- whether power under PPA needs to be procured by the Utility of the State/GRIDCO, on behalf of consumers; If so in what quantity and for what period; whether the consumers needs such power for which the Utilities has aggregated and contracted.
- whether the process of procurement is justified or not
- whether power at such price with mode of supply in PPA is required or not and the terms of the PPA are fair to the consumers of the State and subserves the public interest.

  Thus we conclude that the PPA is to be examined in the eyes and intention of Rule 86(1)(b).

All the above aspects have to be examined by Commission even if there is subsisting MoU by the state or PPA without approval of Commission by GRIDCO. Explicit approval has to be obtained before commencement of purchase for consumers of the State.

Therefore, we proceed as follows:

The original PPA with the respondent generator was signed on 28.09.2006 by petitioner, GRIDCO and was placed before Commission to which the Commission directed in the year 2009 to file revised PPA. Although revised PPA was signed by GRIDCO on 04.01.2011, the same is being filled now after almost seven years for approval (but not with PPAs of other 12 nos. of IPPs as directed) in case No.36 of 2006. This delay should not have accrued.

8. The most preferred mode of purchasing power at competitive rates is under section 63 of the Electricity Act, 2003 through competitive bidding which provides cheapest power to consumers. In this case, State Govt. had signed an MoU to deliver agreed share of power through a designated organisation i.e. GRIDCO. Therefore, GRIDCO has entered into Power Purchase Agreement (PPA) with respondent GMR Energy, under the force of MoU with the State. As stated in MoU (and latter PPA) the cost to be adopted is at the appropriate Commission's determined rate. GRIDCO need to clarify if power at cheaper rate available for equal quality considering all related aspects.

9. MoU between State Govt. and the respondent IPP incorporate the following provisions.

"I(i) Power Generated in excess of 80% plant load factor (PLF)from the Thermal Power Plant will be made available to the State by GEL at variable cost plus incentive (the incentive would be as fixed by Central Electricity Regulatory Commission).

(ii) In firm power will be made available to the State at variable cost.

(iii) A nominated agency(s) authorised by Government will have the right to purchase up to 25% of power sent out from the Thermal Power Plant(s) excluding the quantum of power indicated at item (i) & (ii) under terms of a Power Purchase Agreement to be mutually agreed upon on the basis of existing laws and regulations in force and tariff for such power purchase will be determined by the appropriate Regulatory Commission.

xxxxx xxxxxx xxxxxx xxxxx xxxxxx xxxxxx

I (xiii) GEL further understands that the Govt. has moved Govt. of India for the following policy support; namely

(a) A policy decision through suitable statutory arrangements for making available to the State 12% of the total power generated at variable cost by GEL operating within its territory.

(b) An appropriate legal mechanism to allow generating status to levy duty on power produced so that there is equitable distribution of resources generated between consuming and generating States.

Therefore, as and when the Govt. succeed in levying such duty as per (b) above or obtain concession as per item (a) above, such duties or concessions would be adjusted in aggregate against levies indicate in sub-clause (a) of clause (xii)"

"(xii) xxxxx xxxxxx xxxxxx xxxxx xxxxxx xxxxxx

GEL does hereby agree to support the efforts of the Govt. in the following manner.

(a) An annual contribution @6 paise per unit of the energy sent out from the Thermal Power Plant, during the relevant year to be made by GEL towards the Environment Management Fund.

(b) The contribution as stated above will not be made for energy sold in the State of Odisha".

10. Supplement MoUs were signed between Govt. and the respondent on 29.01.2009, 20.08.2009, 28.10.2010. The capacity of the plant was enhanced to 1400 MW from 1000 MW in the MoU dt.28.10.2010, the above provisions remains unchanged.

11. (a) Power Purchase Agreement was signed between GRIDCO and the respondent M/s GMR Energy on 28.09.2006. Entitlement of quantum of power has been agreed at clause 2.2 of the agreement, where it has been agreed that upto 25% percent of the power sent out from the station, excluding infirm power and power in excess of 80% PLF, shall be the capacity allocated to GRIDCO once in each block period of 5 five years. Power in excess generation of 80% PLF and entire infirm power was agreed to be supplied to GRIDCO at variable charges.

(b) The PPA executed by GRIDCO mentions nothing on the provisions of MoU at Clause (xiii)(a) regarding 12% power generated to the state at variable charges mentioned at para 22 above, but mentions as follows:

"6.2.2 Other Taxes, Levies, Duties, Royalty, Cess, etc.

xxxxx xxxxxx xxxxxx xxxxx xxxxxx xxxxxx

Provided however that the annual contribution @6 paise/unit towards Environment Management fund in respect of the energy sent out outside the State as per the terms of MoU paid by GEL to State Govt. shall not be charged to GRIDCO in any manner."

(c) It is not clear to the Commission under what consideration GRIDCO chose to sacrifice 12% of the capacity at variable cost. If 6 paise per unit was promised in (xii) above, whether the same is being paid to Environmental Management Fund or not need to be clarified by GRIDCO. If not deposited, the state share should be higher by 12% at variable cost. I have not been informed whether State Govt. approval was obtained prior to signing of PPA on this. This clarity need be in place.

12. We consider the following power from the plant.

(a) The revised PPA dt.04.01.2011, now being placed for approval after seven years. Provides at 2.2 that (a) the capacity allocated to GRIDCO shall be upto 25 (twenty five) percent of installed capacity once in each 5 (five) year block period (b) power sent out beyond 80% PLF will be at variable cost determined by OERC and (c)

GRIDCO will also have the right to receive the infirm power sent out of the station at variable cost.

(b) The planned installed capacity is 1400 MW. Capacity already installed is 1050 MW. Therefore state allocation as per plan is 350 MW. Present allocation is 262.5 MW. Size of each unit is 350 MW. Balance 87.5 MW have been tied to other States as seen from submission before us.

(c) I observe that the normative operation PLF is at 85%. Therefore energy in excess of 80% PLF i.e. 5% needs to be available to the State at variable cost which is cheaper. GRIDCO needs to evolve a mechanism or protocol to monitor this allocation which is not in the PPA.

13. I consider the quantity requirement for state consumers as follows. The present and projected demand of the DISTCOMs as approved in the demand forecast in Case No.47 of 2018 is as follows:

"Taking the above facts and views into consideration, the Commission hereby accords in-principle approval of the LTDF submitted by OPTCL basing on the data submitted by DISCOMs for the period from 2019-20 to 2026-27. However, the commission has considered the demand for the year 2018-19 as approved in the ARR for FY 2018-19. The details are as shown in table below:

DEMAND FORECAST (MW / MU)OF OPTCL UP To THE YEAR 2027

Sl. No	Name of Distribution Company	2018-19		2019-20		2020-21		2021-22	
		Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)
1	CESU	9070	1580	9693	1656	10372	1760	11142	1869
2	SOUTHCO	3660	610	3873	639	4021	664	4165	687
3	WESCO	7120	1350	7293	1457	7357	1484	7465	1506
4	NESCO	6140	990	6161	975	6342	995	6520	1015
System Demand(Grid End)		**25990**	**4530**	**27020**	**4727**	**28092**	**4903**	**29292**	**5077**

Sl. No	Name of Distribution Company	2022-23		2023-24		2024-25		2025-26		2026-27	
		Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)	Energy Demand (MU)	Peak Demand (MW)
1	CESU	11729	1960	12312	2050	12907	2140	13538	2233	14207	2330
2	SOUTHCO	4300	708	4439	730	4584	753	4734	776	4889	800
3	WESCO	7594	1527	7717	1547	7842	1566	7972	1588	8105	1609
4	NESCO	6672	1035	6829	1052	6993	1071	7162	1090	7339	1111
System Demand (Grid End)		**30295**	**5230**	**31297**	**5379**	**32326**	**5530**	**33406**	**5687**	**34540**	**5850**

14. The present availability of power as obtained from ARR 2018-19 with GRIDCO is as follows. (Ref. Table 27 of ARR 2018-19).

Quantum of Power Purchase from Various Sources for FY 2018-19

(Figures in MU)

Sources of Purchase	**Installed capacity**	**State Share (%)**	**Available to GRIDCO**	**Estimated Availability for 2018-19 (MU)**	**Commission's Approval for State Drawl for 2018-19 (MU)**
HYDRO (OLD)	1427.50	100	1427.50	3,676.86	3,676.86
Indravati	600	100	600	1,942.38	1,942.38
Machakund	120	30	36	262.50	262.50
Total Hydro			**2063.52**	**5881.74**	**5,881.74**
OPGC	410	100	410	2912.82	2912.82
TTPS (NTPC)	460	100	460	3376.07	3376.07
IPPs (Vedanta)	2400	25	600	7889.53	7889.53
IPP GMRKE	1400	25	350	2456	1842.19
IPPs (Variable cost) JITPL only*	1800	12	216	-	-
CGPs	-	-	-	-	-
Co-Generation Plants				-	-
Small Hydro	57	100		320.00	320.00
Biomass Energy	20	100		80.00	80.00
Wind Energy	50	100		22.00	22.00
Solar Energy	308	100		680.00	680.00
Total renewable					
TOTAL STATE			**4099.52**	**21,162.17**	**21,162.17**
CHUKHA HPS				262.18	262.18
Tala HPS				138.80	138.80
Teesta-V HPS				512.84	512.84
Total Central Hydro				**913.82**	**913.82**
TSTPS-I	1000	32.34	323.40	2229.92	2229.92
TSTPS-II	2000	10	200	1371.85	1371.85
FSTPS-I & II	1600	14.18	226.88	1552.65	-
FSTPS-III	500	17.15	85.75	591.18	-
KhTPS-I	840	15.77	132.47	884.27	854.37
KhTPS-II	1500	2.62	39.30	271.69	271.69
Barh STPS-II	1320	14.79	195.23	1340.13	-
Total Central Thermal			**1203.03**	**8241.69**	**4727.83**
Total Central Sector				**9155.51**	**5641.65**
TOTAL GRIDCO			**5302.55**	**30317.68**	**26803.81**

It is to mention that in spite of availability power from FSTPS-I&II, FSTPS-III. Barh STPS-II power was not allowed because of surplus capacity and high cost. It is also observed, that GRIDCO is not drawing any power from FSTPS I-II&III and 'Barh' STPS-II. The details of payment to these stations should be made public and intimated to the Commission.

Thus there is an existing surplus availability of FSTPS-I&II 226.88 MW or 1552.65 MU, FSTPS III – 90 MW or 1340.13 MU. GRIDCO had submitted no plan for use of these surplus leased capacity (except Barh) in spite of capacity charges recovered from consumers. Commission directed to GRIDCO to trade this energy and recover the capacity charge to GRIDCO to trade this energy and recover the capacity charges to reduce the burden on consumer.

15. Some power stations for which either PPA has been signed and also likely to be inducted in near future in the state as state share are as follows:

		PPA approval	State share		Consequential energy at 85% PF & 5.75% A&E
OPGC	1320 MW	04.04.2012 in Case No.113 of 2011	50%	660 MW	4632
North Karnapura	1980 MW	Yet to be approved	20%	396 MW	2779
NTPC Darlipalli	3200 MW	-do-	50%	(1600 MW) In this year 800 MW	(11229) This year 5614
TTPS	1320	-do-	50%	660 MW	4632
Total				2516 MW	17657

16. The 12% state share of M/s NBVL, 60 MW at variable is also at hand. Apart from above, a number of PPAs has also been signed by GRIDCO whose status is not known to the Commission. I have not gone into details of PPAs with NTPC/NHPC plants from which GRIDCO draws power as state share. GRIDCO need to place on record whether all the power is being drawn by it only through approved PPA of this Commission in accordance with provision of Sec. 86(1)(b) of Electricity Act, 2003.

17. I also instruct GRIDCO to place a consolidated statement of all MoUs by Govt. on power, PPAs executed and approval o this Commission in a consolidated statement for review by Commission. GRIDCO in its ARR 2018-19 projected drawl from this plant at 1840 MU and this has been included on the proposal of GRIDCO even if the PPA was not approved. The Commission because of surplus capacity did not approve any power from CGPs in spite of same being cheaper.

18. It is also important to mention that as per Ministry of Power notification dt.14.06.2018, the energy contribution from RE sources need to rise which is evident from following table.

Year	Renewable Obligation in % of total demand
2019-20	17.50%
2020-21	19.00%
2021-22	21.00%

The above order stipulates the contribution should be 40% by 2030.

19. From the above it can be deduced as follows:

<table>
<tr><th>Year</th><th>Total projected energy demand MU as per Case No. 47/2018</th><th>Percentage of energy from RE sources (%)</th><th>RE or clean Energy MU obligations</th><th>Energy from fossil fuel (anticipated)</th><th></th></tr>
<tr><td>2018-19</td><td>25990</td><td>9.50</td><td>2469.05</td><td>23520.95</td><td rowspan="9">Ref. OERC (Procurement from Renewable Sources and it Compliance) Regulation 2015.
(*) As per GoI, MoP instruction 14.06.2018.</td></tr>
<tr><td>2019-20</td><td>27020</td><td>11.00</td><td>2972.20</td><td>24047.8</td></tr>
<tr><td>2020-21</td><td>28092</td><td>19.00*</td><td>5337.48</td><td>22755</td></tr>
<tr><td>2021-22</td><td>29292</td><td>21.00*</td><td>6151.32</td><td>23140.68</td></tr>
<tr><td>2022-23</td><td>30295</td><td>Not decided but minimum 21%</td><td>Not yet decided</td><td>No decided</td></tr>
<tr><td>2023-24</td><td>31297</td><td>>21%</td><td>>6151.32</td><td></td></tr>
<tr><td>2024-25</td><td>32326</td><td>>21%</td><td>>6151.32</td><td></td></tr>
<tr><td>2025-26</td><td>33406</td><td>>21%</td><td>>6151.32</td><td></td></tr>
<tr><td>2026-27</td><td>34540</td><td></td><td></td><td></td></tr>
</table>

The above table is based on minimum estimates, since this Commission has not yet specified RPO Obligations beyond 2019-20. It is to be kept in mind that nation is committed to clean energy >21% by 2030 and close to 40%. The Commission shall come out clearly on this before approval of any next PPA.

20. It can be observed from the above, that the existing PPA taken together with future availability as per capacity available to GRIDCO exceeds the present demand with the consequence that there may be **idle capacity charge** to some power stations in addition to the **capacity charge of this station** along with the variable cost from which energy drawn unless demand grows as projected. This may not be in the interest of state consumers.

21. Because, the nation and state committed to clean energy and renewable energy, a margin has to be maintained for induction of such energy in line with RPO target of the State Commission along with target set under Electricity Act, 2003. GRIDCO has not

any such projection before the Commission to ascertain the need, target vis-a-vis this PPA.

22. The petitioner, GRIDCO, has not placed before us, at what cost the power is being purchased. For this, I refer to ARR 2018-19 which specifies as under:

*"**M/s GMR Kamalanga Energy Ltd.***

225. GRIDCO has submitted that at present it is procuring power from GKEL at provisional rate of tariff as fixed by CERC in the tariff order dated 12.11.2015 in Petition No.77/GT/2013 for FY 2013-14. Further, Appeal No.74/2014 filed by GRIDCO (in the matter of jurisdiction of CERC for determination of tariff of the IPP which comes in the category of Composite Scheme) before the APTEL against the maintainability of CERC order 03.01.2014 has been dismissed by APTEL vide order dated 7th April, 2016. APTEL had upheld that CERC has the jurisdiction to determine the tariff of GKEL in respect of supply of power to GRIDCO. The said judgment of APTEL dated 7th April, 2016 in respect of 25% State entitlement challenged by GRIDCO before the Hon'ble Supreme Court of India in Civil Appeal No.5415 of 2016 was also dismissed vide Hon'ble Apex Court's order dated 11.04.2017 and upheld the aforesaid APTEL judgment. Further, final judgment of APTEL dated 1st August, 2017 in Appeal No.35 of 2016 and Appeal No.45 of 2016 filed by GKEL and GRIDCO respectively against CERC order 12.11.2015 have been pronounced. GRIDCO is taking necessary action for challenging the said judgment before the Hon'ble Apex Court. Further, GKEL had filed application for determination of tariff for the control period 2014-19 before CERC in Petition No.61/GT/2016 along with truing up for 2013-14 which is yet to be pronounced. However, The Annual Fixed Charges proposed by GKEL for the control period 2014-19 in Petition No. 61/GT/2016 are as follows:

Table-32

Item	***2014-15***	***2015-16***	***2016-17***	***2017-18***	***2018-19***
AFC (Rs. Cr.)	*1352.76*	*1388.04*	*1414.52*	*1410.01*	*1383.78*
GRIDCO's Share of AFC (Rs.Cr.)	***338.19***	***347.01***	***353.63***	***352.50***	***345.94***

226. GRIDCO has further submitted that the Annual Fixed Charges for 25% of contracted capacity towards state share comes to Rs. 345.94 Crore as per the tariff filing made by GKEL for FY 2018-19. Hence, per unit fixed cost has been worked out to be 188 P/U. Considering 10% escalation over and above the average of the actual Energy Charge Rate (ECR) based on use of linkage coal only, the Energy Charge Rate (ECR) has been calculated by GRIDCO at 160 P/U and the total rate of power from GKEL has been calculated to be 348 P/U. The IPP has submitted the tentative Generation plan for FY 2018-19 in compliance to request of GRIDCO. Therefore, the total proposed power procurement cost from GKEL for 1840 MU @ 348 P/U is worked out by GRIDCO to be Rs. 640.32 Crore for FY 2018-19.

227. The Commission observed from the submission of GRIDCO that it is entitled to procure 25% of the power sent out from M/s. GMR Kamalanga Energy Ltd. at the tariff to be determined by CERC and as per PPA the power generated in excess of 80% PLF shall be made available to the state at variable cost. Further, the application filed by M/s. GKEL before CERC for determination of tariff for the control period 2014-19 along with the truing up of the fixed cost for FY 2013-14 is yet to be disposed of.

However, CERC has already approved the provisional tariff for GMR for FY 2013-14 vide its order dt.12.11.2015. Hence, pending the decisions of the aforesaid issues, the Commission like to consider the fixed cost of Rs. 339.30 Crore already approved by CERC for FY 2013-14, for procurement of power from the IPP of M/s. GKEL during FY 2018-19. Accordingly, the fixed cost is computed 184.18 P/U. Further, considering the average linkage coal & oil price indicated in the monthly bills of M/s. Vedanta Limited from the month of April'17 to September, 2017 as submitted by GRIDCO, the average energy charge rate is computed as 139.00 P/U and considered by the Commission for procurement of power during FY 2018-19. Accordingly, the power procurement cost is arrived at Rs.595.36 crore @ 323.18 P/U considering the approved quantum of 1842.19 MU for state use during the FY 2018-19. However, any excess generation beyond 85% PLF shall be purchased by GRIDCO at the variable cost i.e. ECR considering the linkage coal price. The tariff computed here is provisional and considered for computation of ARR of GRIDCO for the FY 2018-19. Any difference after finalization of tariff by the appropriate Commission will be considered in truing up exercise."

23. In absence of the exact cost structure of the station I find it difficult to ascertain whether this approval shall be favourable to consumers of the state and in public interest or not in comparison to other PPAs. Therefore, we entrust this assignment to GRIDCO. GRIDCO is to determine whether cost, capacity charges and variable charges determined by Central Commission and this generator is most economical to the public is present context, keeping in view the present demand of the state and place before the Commission in form of affidavit.

24. We also observe that, had it not been specified in SHAKTI scheme (Scheme for Harnessing and Allocating Koyal (Coal) Transparently in India) and mentioned by CERC in its order in petition No.41/MP/2018 dt.21.02.2018, which is as follows, this Commission would not have opportunity to examine the aspects discussed herein. Extracts of same is as follows:

"Another point which was raised during the hearing is that the PPAs are required to be approved by the respective SERCs, since the original PPAs were approved by the respective SERCs. In our view, once the composite scheme emerges after the commencement of supply from a generating station to more than one state, this Commission will have jurisdiction to regulate the tariff which will include the amendments to the PPAs to factor in the discount offered by the Petitioner in the tariff for the coal linkage under SHAKTI Scheme. After approval of the amendments to the PPAs, the concerned distribution companies may approach the respective SERCs for approval of the electricity purchase and procurement by the distribution companies under Section 86(1)(b) of the Act."

25. It is also required, that GRIDCO shall prepare an inventory of all the sources of power purchase, date of approval of Commission under section 86(1)(b), capacity leased, effective date of operation, Quantity, Price (fixed cost and variable cost both at the time of PPA and when payment is made on annualised basis), present demand of the State,

idle PPAs and capacity with reasons, marginal costs of purchase beyond merit order dispatch, MoUs of State Govt. at various period, state share, fixed costs and variable costs at which purchase is agreed etc. in a tabular form to the Commission along with request for approval of each PPA.

26. On duration of power purchase agreement, we refer to MoU dt.09.06.2006 of Govt. of Odisha and M/s GMRKL.

"1. (iii) A nominated agency(s) authorized by Government will have the right to purchase upto 25% of power sent out from the Thermal Power Plant(s) excluding the quantum of power indicated at item (i) & (ii) under terms of a Power Purchase Agreement to be mutually agreed upon on the basis of existing laws and regulations in force and the tariff for such power purchase will be determined by the appropriate Regulatory Commission."

We refer to consequential PPA at 28.09.2006

"2.2 (a). The capacity allocated to GRIDCO shall be upto 25 (twenty five) percent of the installed capacity of the thermal power station as requisitioned by GRIDCO once in each 5 (five) year block period. GRIDCO shall requisition the capacity upto 25 (twenty five) per cent six months period to be commencement of each 5 year block period. For the first 5 (five)year block period, the requisition shall be given by GRIDCO six months prior to COD."

xxxxxx xxxxxxxxx xxxxxxxxxx

"2.2 (h). In the event GRIDCO decides not to avail part or whole of the aforesaid right during at 5 (five) year block period for any reason whatsoever, GRIDCO shall give six months notice of the same to GEL period to the commencement of the said block period."

We refer to revised PPA at 04.11.2011 which is being placed now for approval.

"2.2(a)The capacity allocated to GRIDCO shall be upto 25 (twenty five) percent of the installed capacity of the thermal power station as requisitioned by GRIDCO once in each 5 (five) year block period. GRIDCO shall at all times have the right to purchase on behalf of Government of Orissa upto 25% (twenty five percent) of the power sent out from the Thermal Power Station excluding the quantum of power in excess of 80% Plan Load Factor and Infirm Power with variable cost. GRIDCO shall requisition the capacity up to (Twenty Five) percent six months prior to the commencement of each 5 year block period."

"2.2.(h) In the event GRIDCO decides not to avail part or whole of the aforesaid right for any reason whatsoever, GRIDCO shall give notice of the same to GKEL prior to the commencement of such reduced power procurement."

"14.0. EFFECTIVE DATE AND DURATION OF AGREEMENT

The agreement shall come into force from the date of signing of the Agreement for all purposes and intent and shall remain operative initially upto completion of twenty five (25) years from the date of commercial operation of last unit of the Station and could be extended beyond the same on mutually agreed terms and conditions."

27. On conjoint reading of the provisions above we understand that the PPA can be valid for a period of 25 years but to be confirmed at each block period of five years.

Upto 25% of installed capacity of the thermal power station can be requisitioned once in each 5 year block period. GRIDCO will have the right to purchase upto 25% of the power sent out from the Thermal power station excluding quantum of power in excess of 80% PLF. GRIDCO shall requisition the capacity upto 25% six months prior to commencement of each 5 years block period.

28. We also refer to 2.2(f) A(1) of PPA which states as under:

"A(i) Capacity (Fixed) Charges: The capacity charges shall be determined by OERC as per the terms and conditions of tariff issued from time to time and shall be related to target availability. Recovery of capacity charges below the level of target availability shall be on pro rata basis. Further, it is to be calculated proportionate to the capacity requisitioned and allocated to GRIDCO."

29. Thus when a capacity upto 25% is available and allocated by the generator, capacity charges have also to be paid within this five year block period.

But, if no power is requisitioned by GRIDCO for certain period after first or second block of 5 years or 10 years or 15 years, the capacity charges for the remaining period shall be paid or not, is not clear in the PPA and decided.

This provision needs to be settled in PPA. We are of the view that for the un-requisitioned block period, the capacity charges should not be paid since the generator is free to sale the capacity in short term or medium term energy market.

30. The Energy Charge Rate of the station has been provisionally arrived at 139.00 P/U based on order of CERC, on the basis of generation plan submitted by the respondent.

CERC in its order dt.21.02.2018 in petition No.41/MP/2018 has also approved the amended/ supplementary tariff for adjustment of the discount in monthly bills to procurers in terms of SHAKTI scheme.

In other words, the reduction in cost of coal availed under the aforesaid scheme needs to be passed on to the consumers of the State after approval of this PPA.

31. Even though, the amended PPA provides for passing on the discount to consumers because of coal linkage under SHAKTI scheme, the final fixed cost charges has not been determined by CERC and the issues have not been settled by GRIDCO. Commission is unable to ascertain and determine the cost implications on the consumers of the Utilities, and whether the purchase shall serve public interest economically and adequately. But simultaneously Commission is conscious of the fact

that GRIDCO has been allowed purchase of this energy in the ARR 2018-19, by this Commission.

32. Therefore, this Commission provisionally accords in principle approval to the amended/ supplementary PPA, to pass on the discount availed by GRIDCO under SHAKTI Scheme from the respondents M/s. GMR, to consumers of the State subject to following.

(a) This approval provisionally shall be valid for initial five year block period beginning from the CoD of the plant as per PPA. GRIDCO shall seek approval of the Commission prior to six months of next block period of five years and for each block period thereafter in similar manner irrespective of period of validity of agreement of twenty five years period.

(b) GRIDCO shall ensure that long term PPAs for supply and demand are in balance to meet the requirement of the State without any surplus or idle capacity charge burdening the consumers of the State.

(c) Provision to accommodate power from RE sources as per national target shall be maintained.

(d) GRIDCO shall review all the MoUs of the state towards state share and consequential PPAs. A consolidated statement showing the elements mentioned at 29 above shall be placed before the Commission.

(e) GRIDCO shall purchase power from only the sources approved by this Commission under 86(1)(b). Any deviation on this shall be brought to the notice of this Commission immediately within three months.

(f) GRIDCO shall display monthly information to the consumers in its website on Name of power station, Installed capacity, State share in percentage, Capacity leased, Fixed cost, Average annual variable cost, Total cost, Energy drawn (in peak and non peak hours), special concession availed, if any for information to public.

(g) GRIDCO shall state reason, for withdrawing from 12% power at variable cost agreed through this MoU with state. If it is in exchange of 6 paise/unit as mentioned in Clause (xii) of MoU, the manner of collection of such levy as mentioned in clause (xiii) last para shall also be elaborated. Whether any Govt. approval for such deviation was obtained or not, shall be informed.

(h) Merit order dispatch principles shall be followed in all power requisition. In case of any deviation, the reasons shall be recorded and shown to audit.

(i) GRIDCO, at all times, give preference to low cost power producer and power at only variable charges to the state user. Any issue arise, should be resolved immediately and in time bound manner for best advantage in cost to the state consumers. Where dispute is not resolved within two weeks, Commission's intervention need to be sought by GRIDCO, through appropriate petitions and seek interim directions (if possible). All payments to low cost power producers should be promptly released to meet the working capital needs for benefit of State consumers. Efforts shall be made by GRIDCO to resolve the issues on coal of the generators with thorough analysis and as per agreement, regulations and norms.

(j) This power and PPA now being approved shall not be used for replacing any low cost PPA or PPA with only variable charges in the basket of GRIDCO.

(k) GRIDCO should make a provision in PPA, on consequences of default for denial or reduction of quantity or others by generator as per rights of GRIDCO.

(l) Director Commercial, GRIDCO shall prepare a strategy to utilise the existing available surplus power, for eliminating idle capacity charges to consumers and submit the same to Commission for consideration.

33. With this, the present petition is disposed off and closed.

Sd/-
(A. K. Das)
Member