

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

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

**Case No. 68/2018**

M/s. GRIDCO Ltd.	.....	Petitioner
Vrs.		
M/s. Vedanta Ltd. & Others	.....	Respondents

**In the matter of:** An application under Section 86(1)(f) of the Electricity Act, 2003 for resolution of disputes regarding execution of Revised Power Purchase Agreement (PPA) in compliance with the direction of the Commission vide order dated 27.01.2016 passed in Case No.21 of 2015.

**For Petitioner:** Shri L. N. Mohapatra, Advocate on behalf of GRIDCO & OPTCL,

**For Respondents:** Shri S. K. Mohanty, GM, OPTCL, Shri Hemant Singh, Advocate and Shri Prashanta Kumar Nayak on behalf of M/s. Vedanta Limited, Shri P. K. Mishra, CLD, SLDC, Shri K. C. Nanda, DGM (Fin.), WESCO Utility and Ms. Niharika Pattnayak, ALO, DoE, GoO.

**Date of Hearing: 15.10.2019**

**Date of Order: 22.06.2020**

The Commission vide its order dated 12.06.2013 passed in Case No. 117/2009, 34/2010 and 56/2012, while approving the consolidated Power Purchase Agreement (PPA) executed between GRIDCO and M/s. Vedanta Limited on dated 19.12.2012, had observed at Para-10 as follows:-

*“Regarding Transmission / Wheeling of Power generated by this power plant it is indicated in the PPA that “Power to GRIDCO shall be made available by SEL at the Bus bars of the Station connected to the transmission lines of OPTCL / PGCIL and it shall be the obligation and responsibility of GRIDCO to make the required arrangement for evacuation of power from such delivery points. SEL shall make independent arrangements for evacuation of the remaining power from the station at SEL costs and responsibility.”*

*On this issue M/s SEL has submitted that under the PPA the obligation to prepare infrastructure for evacuation is with GRIDCO and it is also quite clear that the delivery point for supply of power to GRIDCO is the bus-bar of the generating station and it is the obligation of GRIDCO to make necessary arrangements for evacuation of power from the bus-bar in order to avail state share of power. SEL further submitted that they are reviving the abandoned 400 KV Ib-Meramundali line of OPTCL on deposit work basis and hopeful that upon completion of the same, which is expected*

*by July, 2013, the unit connected to OPTCL Network will be able to run at full 600 MW capacity and normative parameters of operations as per regulations shall be achieved. On this issue the Commission is of the view that since the transmission planning programme of OPTCL for evacuation of power from the upcoming IPPs is under process, GRIDCO/OPTCL may approach the Commission for suitable amendment of the clause in the consolidated PPA, if necessary after finalisation of the same. Till then the present practice of evacuation of power from the power plant of M/s SEL will continue, which is expected to improve after revival of the Ib-Meramundali line of OPTCL.”*

2. Subsequently, the Commission vide its order dated 27.01.2016 passed in Case No. 21/2015 in the matter of conversion of IPP units of M/s. Vedanta Limited to captive generating plant had directed as follows:-

*“35. In conclusion, the Commission issues the following directions:*

- a) Unit – II of the 4 x 600 MW power plant of Vedanta Ltd. will continue to remain as IPP and connected to the State Grid.*
- b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*
- c) Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.*
- d) The coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- e) The pricing of power of State entitlement shall be based on IPP pricing Regulation of the Commission.*
- f) The above decisions are made on the basis of assurance of the Petitioner that it shall honour all the conditions as stipulated in the existing PPA in spite of conversion of some IPP units to CGP.*
- g) We direct the Petitioner and GRIDCO to bring about necessary changes in the PPA as per the present order and place the same for the approval of the Commission within 15 days. OPTCL is also directed to bring about necessary changes in the connectivity agreement as stated by them in Para-15.”*

3. Now, GRIDCO Limited has filed the present petition before the Commission for resolution of disputes arising between GRIDCO and M/s. Vedanta Limited during the process of amendments of the consolidated PPA dated 19.12.2012 as per the above orders of the Commission. The petitioner- GRIDCO Ltd. has submitted that M/s.

Vedanta Limited provided a draft revised PPA to GRIDCO vide its letter dated 10.02.2016 and 21.04.2016. But GRIDCO could not act upon this revised PPA in view of the observations of the Commission at Para-32 of the CGP conversion order dated 27.01.2016 dealing with the responsibility of development of evacuation infrastructure for drawal of State share of power. However, a petition was filed before this Commission by GRIDCO for amendment of Clause-4 of the consolidated PPA regarding transmission/wheeling of power for supply of State entitlement to GRIDCO, in line with the provision in the revised PPA with other IPPs of the State, which was admitted as Case No. 59/2016. GRIDCO further submitted that they had scrutinized the draft revised PPA and forwarded the same to M/s. Vedanta Limited on 17.01.2018 with their views. Meetings were held between both the parties on 27.01.2018 and 26.02.2018, but no consensus was reached on certain issues like inclusion of compensation clause for default in supply of State share of power and wheeling and transmission of power in line with PPAs with other IPPs etc. Therefore, the PPA could not be amended in compliance to the direction of the Commission's order dated 27.01.2016 passed in Case No. 21/2015.

4. GRIDCO has further submitted that M/s. Vedanta Limited failed to supply power to GRIDCO as per the aforesaid order dated 27.01.2016 of the Commission during FY 2017-18, 2018-19 and also thereafter. M/s. Vedanta Limited vide Minutes of the Meeting (MoM) dated 01.11.2016 agreed to pay compensation to GRIDCO for short/non-supply of State share of power from its power station. Another MoM dated 07.12.2017 was also signed between GRIDCO and M/s. Vedanta Limited wherein M/s. Vedanta Limited also agreed to compensate State entitlement of power either from its CGP units or by purchasing the same from outside or any other sources, when Unit-II would not be in operation. But this commitment was not fulfilled by M/s. Vedanta Limited. In another MoM dated 03.09.2018 M/s. Vedanta Limited had admitted its inability to supply State entitlement of power to GRIDCO and proposed another rate of compensation other than that agreed on 01.11.2016, which was not accepted by GRIDCO. In that meeting M/s. Vedanta Limited had disclosed that such short supply of power would continue upto March, 2019, but short supply of power is still continuing. However, the connectivity matter (transmission / wheeling of State entitled power) has been resolved by the Commission in the meantime in its order dated 09.04.2019 in Case No. 59/2016.

5. In view of the above, the petitioner GRIDCO has prayed the Commission to direct M/s. Vedanta Limited to execute the revised PPA incorporating the compensation clause.
6. The Respondent-M/s. Vedanta Limited has submitted that in compliance with the directions of the Commission vide order dated 27.01.2016 in Case No. 21/2015, they had submitted the draft revised PPA to GRIDCO vide its letter dated 10.02.2016 incorporating necessary amendments. Thereafter, M/s. Vedanta Limited had followed up with GRIDCO vide its letters dated 21.04.2016, 08.07.2016, 29.09.2016, 02.11.2016, 22.02.2017, 07.04.2017 and 22.08.2017 for signing of the revised PPA and presenting the same before this Commission for approval. But they received the draft revised PPA with comments of GRIDCO only on 17.01.2018. Modification/ incorporation of certain clauses by GRIDCO in the draft revised PPA was not acceptable to M/s. Vedanta Limited. Hence, they had put forth their views before GRIDCO on 27.01.2018 on the amended draft PPA. However, owing to disagreement between the parties on certain provisions of the draft amended PPA, the same could not be finalized and submitted before this Commission for approval.
7. M/s. Vedanta Limited has submitted that a meeting was held on 01.11.2016 amongst GRIDCO, SLDC, WESCO Utility, OPTCL and M/s. Vedanta Limited wherein various modalities regarding the connectivity of IPP and CGP Units of M/s. Vedanta Limited were deliberated. In the said meeting, a modality for calculation of compensation on account of short supply of power was also determined. However, the same was subsequently modified in the MoM dated 03.09.2018 subject to approval of the Commission in revised PPA. M/s. Vedanta Limited submitted that any discussion about short supply of power by them shall be based on the principle that M/s. Vedanta Limited shall indemnify GRIDCO the actual direct differential cost incurred by it as a result of short supply of power and in doing so, the concept of “no profit no loss” to GRIDCO shall be applied. The said discussions should be concluded in the form of a proposed amendment to the PPA in a time bound manner.
8. M/s. Vedanta Limited has further submitted that they are suffering crippling financial distress as they have not received any payment for the power supplied to GRIDCO during the period from July, 2017 to February, 2019, which is severely impacting their cash flow. There is an outstanding due of Rs. 385.35 Crore on GRIDCO for the period from April, 2017 to March, 2019. However, the overall outstanding amount

including the receivables for the control periods FY 2010-14 and FY 2015-19 is Rs.1374 Crores. M/s. Vedanta Limited has prayed the Commission for urgent intervention in the matter and to give interim directions to GRIDCO for the release of aforesaid dues at the earliest as per the provisions in the existing PPA to ensure continued operations of the plant and uninterrupted power supply to GRIDCO.

9. Heard the parties at length and perused the case records. The Commission vide its interim order dated 28.05.2019 in the instant case had directed both GRIDCO and M/s. Vedanta Limited to sit together with Director (RA), OERC in the office of the Commission to resolve the disputed issues and submit the outcome of the said meeting before the Commission. Two rounds of discussion between parties on 21.06.2019 and 20.09.2019 took place but the following issues except the issue at (e) mentioned below remained unresolved.
- a. Whether the basis of calculation needs to be 15 Minutes Block wise or Monthly?
  - b. Definition of Marginal Sources and priority of Marginal Sources
  - c. Methodology of Annual Fixed Charge / Capacity Charges calculation
  - d. Compensation for short supply and Incorporation of Compensation Clause in PPA
  - e. Period of short supply
  - f. Additional PoC charges & Losses
  - g. Opportunity loss of GRIDCO due to short supply of power by M/s. Vedanta
10. Since no consensus was arrived between the parties on the above disputed issues, now the Commission decides the issues as under:

- a. Whether the basis of calculation needs to be 15 Minutes Block wise or Monthly:**

**GRIDCO's View:**

- The contention of GRIDCO is that in order to capture the actual excess/short fall quantum of power supplied by M/s. Vedanta Limited the same should be calculated on 15 minute block wise. In Odisha Grid Code, 2006 at Clause 1.19 time block has been defined as “block of 15 minutes each for which special energy meters record specified electrical parameters and quantities with first time block starting at 00:00 hours. As per OERC Intra- State ABT

Regulations, 2007, scheduling shall be based on provisions of OERC Tariff Regulations, 2004 and State energy account, billing & settlement of capacity charge, energy charge, UI charge and reactive energy charge shall be prepared by SLDC. The SLDC shall be responsible for computation of actual net MWh injection of each generating station and actual net drawal of each user 15 minutes-wise, based on the above mentioned meter readings. Further, as per the OERC Generation Tariff Regulations, 2014, “the methodology for scheduling and dispatch for the generating stations shall be as specified in the Grid Code. Therefore, GRIDCO is of the view that energy accounting should be done on 15 minute block basis as done for plant availability factor and plant load factor. In the instant case, if M/s. Vedanta Limited defaults in supplying State entitlement of power during peak hours and supplies more than entitlement in off-peak hours then this deviation cannot not be captured in monthly statement.

- GRIDCO further submitted that as per the existing PPA energy bills are to be raised on monthly basis. However, calculation of energy transaction is always done on 15 minute basis, as the declared capacity and implemented schedule are on 15 minute basis. If 15 minute block wise calculation is not considered then short fall in any block may be nullified by inadvertent supply in any other block.

**Vedanta’s View:**

- M/s. Vedanta Limited has submitted that as per the existing PPA, M/s. Vedanta Limited is entitled for the tariff determined by the Commission as per the Tariff Regulations. In the instant case, for short supply of power, GRIDCO is only entitled for compensation on account of proof of “actual loss or damage” which cannot at all be equated with tariff. Compensation is momentary and the mechanism of computing the same has been agreed as per the understanding arrived in the MoM dated 07.06.2019 held at OERC. GRIDCO cannot unilaterally deviate from the above understanding by arguing that instead of agreed monthly settlement of compensation for short supply, the same should be done on 15 minute time block basis. The principles of tariff provided under the Act and Regulations cannot be made applicable for computing any compensation. There is no provision under Electricity Act,

2003 for the same. Computation of compensation is a term strictly governed by the provisions of Contract Act, 1872.

- M/s. Vedanta Limited submitted that scheduling, dispatch and accounting are governed by Grid Code wherein it is provided that dispatch should be done in 15 minutes time block. Any deviation from the declared capacity is settled under prevailing UI / DSM Regulations, where settlement of deviation from declared capacity is being done on 15 minute block. This is applicable in cases where there is deviation from the scheduled quantum of power as declared to SLDC during a given time block. However, this is not the case in the present cause of action wherein the question is regarding payment of compensation for short supply of power to GRIDCO against the total power supply obligation and not deviation from the scheduled quantum of power. Further, the assessment of such shortfall in power supply cannot be done in real time basis in 15 minute block. Total power supply obligation for a month can be assessed only at the end of a month based on the total generation. Moreover, 15 minute block transaction are done on a real time basis, while the present issue of compensation on account of shortfall of power supply is based on the deficit quantum which is derived at the end of the month.
- M/s. Vedanta Limited submitted that in case the shortfall in power supply is compensated by the highest marginal cost of ISGS, the monthly calculation would give the appropriate compensation as the marginal cost of ISGS is constant for a month due to monthly billing cycle. Injection of less power during peak period and more power in off-peak period have no relevance with the present issue of compensation on account of short supply of power. Further, as per OERC Generation Tariff Regulations, 2014 as well as under the existing PPA there is provision for monthly settlement of dues and bills which has been followed by both the parties. Therefore, M/s. Vedanta Ltd. suggested for the calculation of the energy shortfall on monthly basis towards compensation.

#### **Commission Observation**

- We heard both the parties on this issue. As per Clause 6.5.1 (2) of Odisha Grid Code, 2015, all generators including IPP shall provide the 15 minutes block

MW/MVAr availability (00.00-24.00 hours) of their respective units to SLDC on day-ahead basis. Further, as per Annexure-1 to Chapter-6 of the Odisha Grid Code under the heading “Complementary Commercial Mechanisms”, all beneficiaries shall pay capacity charges to the generator corresponding to plant availability and energy charges for the scheduled dispatch as per the relevant notifications and orders of the OERC. Therefore, any generator injecting power to the grid is monitored under 15 minutes block for its injection. Beneficiaries are affected if the scheduled generation is not maintained by the generator. The present case arises out of bi-partite agreement between Vedanta and GRIDCO. If Vedanta injects less power in any 15 minute block, GRIDCO has to source the shortfall quantity in that time block only from other generators/sources. Therefore, GRIDCO must be compensated on 15 minute block basis. We fully agree with the argument of GRIDCO in this regard. The computation of bill and compensation due to shortfall shall be made on 15 minute basis and the bill shall be paid on monthly basis after deducting the compensation.

**b. Definition of Marginal Sources and priority of Marginal Sources**

**GRIDCO’s Views:**

- All marginal sources has not been specified in the MoM dated 07.06.2019. It is difficult to consider marginal sources, as in a single 15 minute time block there are more than one marginal source (un-requisitioned power, power from power exchanges, ISGS power and power overdrawn under DSM), which is practically a cumbersome task to workout.
- As per earlier MoM dated 01.11.2016, GRIDCO has already considered ISGS power vis-à-vis DSM rate only for working out penalty for default in supply of State entitlement of power. GRIDCO intends that the Commission should approve the same.

**Vedanta’s Views:**

- Vedanta stated that “Marginal source” is a well understood business concept. As per the MoM dated 07.06.2019 at OERC, the marginal sources (IEX & ISGS) would be ranked in the decreasing order of prices. The additional cost as agreed in the said MoM, for IEX source is the monthly average per unit cost



minus M/s. Vedanta Tariff and for ISGS stations it is energy charge rate plus incentive minus M/s. Vedanta Tariff.

- The rate of marginal sources of power should be in decreasing order i.e. highest to lowest. When shortfall for a particular period is compensated by more than one marginal source, the highest cost of marginal source of power would get compensated first, then the balance shortfall is compensated by second highest cost of marginal sources of power and so on, till the recovery of complete shortfall in energy for that period.

**Commission's Views:**

- The Commission observed that in the MoM dated 07.06.2019 marginal sources of ISGS and power exchange have been decided. However, GRIDCO stated that other marginal sources such as un-requisitioned power from ISGS and power overdrawn under DSM have not been considered in the MoM dated 07.06.2019.
- We agree with the views of GRIDCO that the marginal sources should include un-requisitioned power from ISGS, power overdrawn under DSM and power drawn from IEX. The price of the power drawn from the above marginal sources in 15 minute block should be utilized for computation of loss.

**c. Annual Fixed Charge / Capacity Charges Calculations**

**GRIDCO's Views:**

- Capacity Charge is payable to M/s. Vedanta Ltd as per provisions of Regulations and based on certified monthly PAFM statement issued by SLDC.
- When Unit-2 (IPP Unit-600 MW) was under shutdown condition, declared capacity by M/s. Vedanta Limited in respect of Unit-2 was Zero and in such cases PAFM shall be automatically zero and Capacity Charge payable by GRIDCO works out to be Zero.
- Further, as per OERC Order dated 27.01.2016 in Case No.21/2015, the State entitlement of power from M/s. Vedanta Ltd is dependent on Energy Sent Out (ESO) from the entire power plant (i.e. one IPP unit and 3 No. of CGP units). Purpose of penalty is to prevent M/s. Vedanta Limited from resorting to short supply/no supply of power to the State/GRIDCO even when the three CGP

units are operating to their maximum limit. Deviation from aforesaid OERC order dated 27.01.2016 ought not to be allowed which was based on categorical assurance given by M/s. Vedanta Limited through affidavit. Under no circumstances M/s. Vedanta Limited is entitled to full recovery of both fixed and variable charges during non/short supply of power to GRIDCO.

**Vedanta's View:**

- M/s. Vedanta Ltd. submitted that MOM dated 07.06.2019 is very clear that Vedanta is entitled to full recovery of both fixed and variable cost of supply. Even in principle, had Vedanta supplied the power, it would have been entitled to full tariff i.e. fixed + variable. Accordingly, Vedanta cannot be denied the fixed tariff in any case.

**Commission's Observation:**

- The Commission observed that as per the formula given in the existing OERC Generation Tariff Regulations, capacity charge payable to the generator in a month shall be calculated basing on the monthly plant availability factor (PAFM) certified by SLDC considering the declared capacity of the generator. The Commission is of the view that monthly billing of capacity charge shall be made as per the formula given in the OERC Generation Tariff Regulations. But when PAFM is zero then capacity charge for that month would also be zero.
- However, in case of M/s. Vedanta Limited after conversion of Units-1, 3 & 4 to CGP units, the Commission vide its order dated 27.01.2016 in Case No. 21/2015 has directed that *"The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission"*. It implies that in case of low or no generation in Unit-2 M/s. Vedanta Limited has to supply State entitlement of power from its CGP units or from other sources. Such supply of power from CGP units or other sources shall be deemed to have been supplied from the IPP-unit-2. Hence, PAFM of Unit-2 shall be calculated by SLDC based on the actual energy supplied by M/s. Vedanta Limited. Accordingly, capacity charge shall be computed.

**d. Compensation for short supply and Incorporation of Compensation Clause in PPA**

**GRIDCO's View:**

- GRIDCO has submitted that, vide Order dated 04.06.2019 in Case No. 1/2017 and 64/2017 in the matter of PPA approval of JITPL (it supplies power to GRIDCO at variable cost) , the Commission has directed as under:

*“Compensation should be equal to the variable cost of the Central Thermal Generating Station approved by the Commission for power purchase of GRIDCO and situated at the margin of the merit order dispatch for that year”.*

- In the above case the marginal source has been defined by the Commission and penalty has been fixed at variable cost of central thermal generating stations. It implies that in case of non-supply of state entitlement of power which is procured at single part tariff for M/s. JITPL is to be compensated at single part tariff and not at differential tariff. In the same line M/s. Vedanta Limited had voluntarily and consciously agreed in the MoM dated 01.11.2016 to pay the penalty for non-supply of power at DSM or ISGS rate whichever is higher. But, as per MoM dated 07.06.2019, GRIDCO will be compensated at differential of one part tariff of marginal sources vis-à-vis two part tariff of M/s. Vedanta Limited. There should be parity in penalty provision for IPPs as GRIDCO is the only State designated entity in the State. Any relaxed penalty/ compensation norm for M/s. Vedanta Limited shall invite further legal conflict for GRIDCO and would create precedence for others.
- The purpose of penalty is not only to recover the actual cost incurred but most importantly to deter M/s. Vedanta Limited from deviating from the contracted provision and it acts as a check point to abide by the agreed terms of contract / Commission's order. Hence, penalty cannot be cost to cost basis, zero or negative. If penalty calculation is done considering (ECR + incentive) of ISGS minus applicable tariff of M/s. Vedanta (Capacity charge + ECR) as per the MoM dated 07.06.2019, then there is every possibility of penalty amount to be negative/zero. Under no circumstances penalty should be nil. Hence the logic/ principle considered in the MoM dated 07.06.2019 is totally not implementable, which will otherwise be a precedence for generators operating

in the State to be at liberty to default from bonafied obligations of supply of power to the State as agreed in MoU and PPA and commitment filed before the Commission.

- GRIDCO submitted that M/s. Vedanta Ltd should not be allowed to generate profit by using State share of power. In case of the shortfall in generation in Unit-II M/s. Vedanta should compensate the same from converted captive generating units. If M/s. Vedanta defaults in the same it must have utilized the power from converted CGPs fully for its own use. Had M/s. Vedanta complied with the obligation to supply power to the GRIDCO it would have to meet its captive demand by drawing power from power exchanges with power exchange rate plus PoC charges including losses or from WESCO Utility at applicable Retail Supply Tariff (RST). In addition to that for availing power from power exchanges through open access M/s. Vedanta would have paid cross subsidy surcharges.
- By citing provisions of Indian Contract Act, 1872, M/s. Vedanta Limited has admitted that there is breach of OERC order dated 27.01.2016 in Case No. 21/2015 and subsequent MoM dated 01.11.2016. There is an exception to Section 74 of Indian Contract Act, 1872 which states that if a party enters into a contract with State or Central Government for the performance of an Act in the interest of the general public, then a breach of such a contract makes the party liable to pay the entire amount mentioned in the contract. In the present case MoM dated 01.11.2016 was voluntarily and consciously signed by M/s. Vedanta Limited and is a valid contract implemented undisputedly for about 17 months i.e. from October, 2016 to March, 2018 without any dispute raised by M/s. Vedanta Limited. In this MoM penalty has been worked out and raised on M/s. Vedanta Limited for payment. Therefore, denial of MoM dated 01.11.2016 by M/s. Vedanta Limited shall be hit by the principle of promissory estoppels.
- In view of the aforementioned facts, GRIDCO proposes to incorporate the penalty provision in Revised PPA as per Clause 12 (iv) of MoM dated 01.11.2016 which was agreed by M/s Vedanta Ltd for non /short supply of power by the IPP. The said Clause 12(iv) of the Minutes of Meeting dated 01.11.2016 is mentioned below:

*“In case of breakdown / shutdown of IPP Unit-2, M/s Vedanta Ltd. shall deliver 30% of Power Generated from its converted CGP units in operation to GRIDCO towards State Entitlement, failing which M/s Vedanta Ltd. shall pay penalty / Compensation for the quantum of power not injected at the rate of DSM rate / highest ISGS rate (of ISGS Station from whom GRIDCO has certain entitlement) during such period whichever is higher”.*

- GRIDCO stated that the penalty provision in PPA need to be simple and stringent to prevent/deter M/s. Vedanta Ltd (IPP) from not adhering to direction given by the Commission regarding supply of power to GRIDCO vide order dated 27.01.2016 in Case No.21 of 2015. For lapses on the part of M/s. Vedanta Ltd. the consumers / larger public of the State ought not to be burdened in any manner whatsoever in the interest of justice.

### **Vedanta's View**

- The Indian Contract Act, 1872 does not permit the party not at breach to recover anything in the nature of penalty beyond the actual cost from the party at breach. Penalty is not permitted under the Contract law. If the actual loss suffered by GRIDCO in any month is NIL, then GRIDCO cannot recover any compensation from Vedanta.
- Further, the issue of non-supply of power already stands settled between GRIDCO and M/s. Vedanta Limited vide MoM dated 07.06.2019 wherein the principles for computation of compensation towards short fall in power supply has been devised. GRIDCO cannot be allowed to re-open all the settled issues. As such GRIDCO cannot be allowed to continue to be referring to the earlier MoM dated 01.11.2016. In another MoM dated 03.09.2018 GRIDCO itself agreed to the IEX method for computing compensation for shortfall of electricity, subject to approval of this Commission. In fact the parties have been in discussion on the subject matter of short supply since November 2016. The MoM dated 01.11.2016 was disputed and the same was never submitted to OERC for approval by either of the parties. The MoM dated 03.09.2018 recognizes the fact that the said understanding was disputed and by mutual consent suggested a methodology to resolve the same in the current petition before the Commission. The parties have met under the directions of the Commission on 07.06.2019 concluding their understanding in form of a MoM dated 07.06.2019. The understandings in the MoM dated 01.11.2016 now

stand modified by mutual consent vide MoM dated 07.06.2019 and consequentially the MoM dated 01.11.2016 stands superseded to that effect. In a contractual dispute, as per law, the last agreed position between the parties is always considered as the bench mark for deciding the disputes. M/s. Vedanta Ltd. abide by the MoM dated 07.06.2019. GRIDCO should also honour the same.

- GRIDCO has entered into the arrangement recorded in the MoM dated 07.06.2019 which captures the compensation payable from the principle of “Law of damages” and includes other sources like power exchange as well, which is not the case in JITPL. Now GRIDCO cannot wriggle out the MoM dated 07.06.2019 based on an afterthought. The issue and rate of recovery from JITPL by GRIDCO was an unrelated issue and GRIDCO cannot make a cause of a different contract / agreement, executed with a third party, applicable to M/s. Vedanta Limited.

**Commission’s Observation:**

- The present dispute is all about compensation to GRIDCO in case M/s. Vedanta fails to supply the State entitlement of power. The PPA between GRIDCO and M/s. Vedanta is nothing but a contract for supply of power by the latter to GRIDCO. This contract is governed under Indian Contract Act, 1872 once it is approved under Electricity Act, 2003 and OER Act, 1995. In case the contract is not honoured the affected party can move the appropriate forum under Indian Contract Act. Section 73 of the Indian Contract Act defines compensation for breach of contract as follows.

*“Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*

*Xxxxxx*

*When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.”*  
*Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.”*

- From the above explanation in the Contract Act it is clear that the remedy for non-supply of power by M/s. Vedanta lies in purchase of same quantity of power by GRIDCO from marginal ISGS sources, un-requisitioned ISGS sources, IEX and DSM sources. In case GRIDCO draws power from marginal ISGS sources it has to pay variable charges only since the capacity charge is payable anyway irrespective of whether power is drawn or not since the GRIDCO has long term contract with them. Similarly, in case of un-requisitioned ISGS sources, the GRIDCO has to pay both fixed and variable charges. In case of IEX and DSM sources the price of the power is to be paid on single part basis. In case of non-supply of power by M/s. Vedanta, GRIDCO is to bear expenses to purchase same quantity of power by paying variable charge to ISGS sources, both fixed and variable charge to un-requisitioned ISGS sources and single part tariff to IEX and DSM sources. GRIDCO must be compensated if it incurs loss while purchasing such power. The loss here is additional price GRIDCO pays to those sources over and above the price GRIDCO would have paid to M/s. Vedanta had it purchased power from them. This is the inconvenience to GRIDCO and must be remedied through a compensation as per the Contract Act. The compensation shall always be positive or nil depending upon the price at which GRIDCO purchases power from marginal sources. In no case it can be negative, which otherwise means GRIDCO is able to purchase power from sources cheaper than that of M/s. Vedanta. However, when shortfall for a particular period is compensated by more than one marginal source, the highest cost of marginal source of power would get compensated first, then the balance shortfall is compensated by second highest cost of marginal sources of power and so on, till the recovery of complete shortfall in energy for that period. Accordingly, both the parties are directed to incorporate a clause in the revised PPA on the issue of compensation arising out of non-compliance of commitment of M/s. Vedanta for supply of State entitlement of power.
- The issue of agreement with M/s. JITPL on compensation for non-supply of power to GRIDCO has no application here. In case of JITPL it supplies 12%/14% of generated power to GRIDCO on variable cost basis only whereas M/s. Vedanta supplies power on full cost basis which consists of both fixed and

variable charges. In case of short supply or no supply of power from Unit-II (IPP unit) of Vedanta, it is duty bound to replenish the same from its converted CGPs which is not the case of M/s. JITPL.

**e. Period of short supply**

**GRIDCO's View**

- The Commission may decide the penalty provision for short/non-supply of power to the State for incorporation in the Revised PPA effective from 01.04.2015 the date of conversion of IPP units to CGP till completion of 25 years of contract period.

**Vedanta's View**

- M/s. Vedanta Limited agrees that the principle agreed in the MoM dated 07.06.2019 in relation to the short supply be made applicable for the entire contract period from the date of conversion of the units to CGPs i.e. from 01.04.2015.

**Commission's Observation:**

- The Commission observed that since both GRIDCO and M/s. Vedanta Limited have agreed for applicability of compensation towards short supply w.e.f. 01.04.2015 i.e. the date of conversion of three IPP units to CGP, the revised PPA should mention the same.

**f. Additional PoC Charges & Losses**

**GRIDCO's View**

- GRIDCO stated that the additional PoC charges and losses which will be borne by them for availing power from marginal sources, needs to be incorporated in the revised PPA. PoC charges and losses are basically CTU charges which is paid by the users on basis of their uses. GRIDCO is liable to pay PoC charges towards its allocation from the ISGS as well as while availing power from power exchanges, un-requisitioned surplus power, etc.

**Vedanta's View**

- The issue of payment of PoC charges are extraneous to the present dispute. PoC charges are levied by CTU for recovery of transmission asset billed under



Bulk Power Transmission Agreements (BPTA) with Designated Inter-state Customers (DICs). GRIDCO has Long Term Access (LTA) for drawal of power from Central Sector Stations, therefore, GRIDCO has to pay such charges irrespective of the fact that whether M/s. Vedanta Limited supplies power or not.

- GRIDCO has entered into agreement with ISGS to procure power on cost plus basis and it has bearing on the injection loss of these stations in addition to withdrawal loss. In circumstances where GRIDCO availed power from ISGS, transmission losses are on account of GRIDCO. GRIDCO has to bear the losses on account of transmission of power. The same cannot be recovered through compensation from M/s. Vedanta Limited.

**Commission's Observation:**

- We find that the long term PoC charges, which is based on the allocation of Central Generating Stations, is a kind of fixed charge. However, short term PoC charge is variable in nature based on the schedules executed through short term open access. Further, for availing un-requisitioned surplus power from Central Generating Stations, the procurer has to pay the CTU charges through transmission deviation charges basing on regional transmission deviation account. Therefore, the argument of M/s. Vedanta is not tenable since GRIDCO would not know from which sources power will be procured in case of non-supply of the same by M/s. Vedanta. Therefore, the Commission is of the view that whenever GRIDCO procures additional power from other sources due to short supply of power by M/s. Vedanta Limited and pays additional POC charges to the CTU beyond the fixed POC charges on account of such additional power purchase, the additional cost borne by GRIDCO towards PoC charges shall be recovered from M/s. Vedanta Limited.

**g. Opportunity loss of GRIDCO due to short supply of power by M/s. Vedanta**

**GRIDCO Views**

- The Commission in ARR order of GRIDCO for FY 2017-18 and FY 2018-19 has allowed to generate revenue for repayment of loan principal and reduce the past losses by trading the available surplus power. This opportunity of GRIDCO has been lost due to non-supply / short supply of power by M/s

Vedanta Ltd. Therefore, this aspect of opportunity loss of GRIDCO may be addressed as well.

### **Vedanta Views**

- M/s. Vedanta Ltd. submitted that the Indian Contract Act, 1872 read with the law on damages settled by the courts of the country, clearly hold that only direct losses are reimbursable. No claim can lie for any indirect cost / opportunity loss. GRIDCO has anyway purchased the shortfall quantum from other sources and is charging the additional cost to Vedanta. In effect, GRIDCO was at the same position in terms of total power available to it and hence no case of claim of any loss from imaginary trading of power can be entertained.

### **Commission's Observation:**

- The Commission observed that since M/s. Vedanta Limited has agreed to compensate GRIDCO for its actual loss/damages due to short supply of power the opportunity loss as claimed by GRIDCO, which is very difficult to quantify, should not form part of the PPA. However, GRIDCO has the liberty to file separate petition before the Commission, when GRIDCO is genuinely affected and the opportunity loss it claims is quantified.

### **Additional issues raised by the parties during Hearing**

#### **h. Issue of connectivity**

##### **GRIDCO's View**

- The issue of connectivity has been resolved by the Commission in its order dated 09.04.2019 passed in Case No. 59/2016, wherein M/s. Vedanta Limited is obliged to deliver State share of power from its power station at the nearest Grid Sub-station of OPTCL. This observation has come out of the order dated 10.05.2016 of the Hon'ble APTEL passed in Appeal No. 25/2014. Hence Clause 4 of the consolidated PPA dated 19.12.2012 is required to be modified accordingly.

##### **Vedanta's view**

- The Commission vide its order dated 09.04.2019 has disposed of the Case No. 59/2016 on the matter of connectivity and evacuation of power and in the said

order, the Commission has given liberty to the petitioner and the respondent to rephrase the concerned clause on evacuation arrangement in the PPA in line with the observations dated 10.05.2016 of the Hon'ble APTEL in Appeal No. 25/2014 in this regard. As such M/s. Vedanta Limited does not wish to contest the same.

**Commission's Observation:**

- Since the issue of connectivity has already been taken care of in Commission's order dated 09.04.2019 passed in Case No. 59/2016 and neither GRIDCO nor M/s. Vedanta Limited have challenged the said order before any higher Forum, the directions given in the said order shall be followed by both the parties.

**i. Adjustment of Excess Power Supply during FY 2015-16 & 2016-17**

**GRIDCO's View**

- Regarding the issue of adjustment of excess power supply made during 2015-16 and 2016-17 against current shortfall as raised by M/s. Vedanta Limited, GRIDCO has stated that such short supply cannot be adjusted against excess supply in view of the order dated 27.01.2016 in which the State entitlement has been envisaged as generation from Unit-II or 25% + 7%/5% of energy sent out from the power station whichever is higher, is the actual entitlement of the State/GRIDCO as per the said order.

**Vedanta's View**

- Both the parties had agreed in the MoM dated 03.09.2018 that any excess power supply from CGP units (i.e. Unit-1, 3 & 4) beyond the State entitlement can be considered for adjustment against shortfall in subsequent years subject to incorporation of such provisions in revised PPA.
- The entitlement of GRIDCO is the generation from Unit-2 or 25% + 7%/5% of total energy sent out from the power station (4x600 MW) whichever is higher. The calculation of excess power has been derived strictly keeping in mind the above protocol.
- The issue of excess supply or short supply of power is related to compensation which is purely a contractual issue. Hence, the arrangements arrived between the parties in the MoM dated 03.09.2018 shall squarely apply.

### **Commission's Observation:**

- The Commission observed that as per the order dated 27.01.2016 passed in Case No. 21/2015 the entitlement to the State must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. The State share cannot be disturbed at any point of time. This has been decided by the Commission while allowing conversion of IPP units (Units-1, 3 & 4) to CGP units. This share of the State has to be maintained in each 15 minute block schedule. Since the demand during the day changes, adjustment of oversupply during the off-peak hours against short supply in the peak hours is not permissible. So is the case with supply variations over different seasons of the year. Further, tariff changes from year to year. Therefore, adjustment of oversupply in a year against short supply in another year does not make sense and hence not permissible.

### **j. Issue regarding Non-supply of power during the period 29.08.2017 to 08.01.2018 i.e. on account of force majeure event.**

#### **GRIDCO's View**

- On the issue of non-supply power by M/s. Vedanta Limited during the period from 29.08.2017 to 08.01.2018 due to failure of ash pond leading to closure of two numbers of units (Unit-2 & 3), GRIDCO stated that such events are liable to be tested under existing force majeure Clause-11.0 of the PPA dated 19.12.2012. Due to closure of these two units the State entitlement has been reduced automatically. However, waiver of supply obligation during this period will be violation of OERC order dated 27.01.2016 passed in Case No. 21/2015, wherein M/s. Vedanta Limited has to supply State share of power from its converted CGP units in case of low or no generation from IPP-Unit-2.
- The proposal of M/s. Vedanta Limited to insert a new force measure clause in replacement to the existing one is not acceptable to GRIDCO. The "force majeure" conditions have been clearly defined in the Odisha Grid Code Regulation, 2006 and accordingly the same has been incorporated in the subsisting PPA. The present Clause 11 on force majeure in the approved PPA

is an universally adopted clause and does not warrant its replacement/ amendment to cover any situation specific to the cause of M/s. Vedanta Ltd.

**Vedanta's views**

- M/s. Vedanta Limited stated that on 28.08.2017 at 21:30 hours nearly 700 meters of ash pond embankment failed and due to the said breach of the ash pond they received a closure notice dated 13.09.2017 from the Odisha State Pollution Control Board (OSPCB) to stop the operation of the Unit-2 & 3. Hence, supply of power to GRIDCO was affected from 29.08.2017 to 08.01.2018 due to the aforesaid breach of ash pond and subsequent closure notice of OSPCB and lack of avenues for disposal of ash discharge.
- Non-supply of power from 29.08.2017 to 08.01.2018 was attributable to breach of ash pond owing to heavy rainfall in the region. Since it was a natural accident on account of forces of nature, it was a force majeure event. The force majeure clause (Clause-11) of the existing PPA provides that neither party shall be liable for any loss of damage on occasion of any events beyond the control of the affected parties. Accordingly, M/s. Vedanta Limited is not liable to pay any compensation during the period from 29.08.2017 to 08.01.2018 due to non-supply of power on account of force majeure. Further, M/s. Vedanta Limited has prayed the Commission for amendment of the 'force majeure' clause of the existing PPA incorporating breach of ash pond as a force majeure to bring more clarity in the said clause.

**Commission's Observation:**

- The Commission vide its order dated 27.01.2016 passed in Case No. 21/2015 have directed that *"Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission"*.
- In the instant case, due to breach of said ash pond, there was closure of Units-2 & 3, but other two CGP units were in operation. The entire power plant has not been stopped due to above failure of ash pond. Therefore, M/s. Vedanta Limited could have supplied State entitlement power from these CGP units. As

per the above order of the Commission M/s. Vedanta Limited should compensate GRIDCO for not supplying State share of power from the other units when Unit-2 was not in operation due to failure of said ash pond.

**k. Issue regarding utilization of linkage coal for captive purposes**

**GRIDCO's View**

- The Fuel Supply Agreement (FSA) signed by M/s. Vedanta Limited for the IPP-Unit-2 assures Annual Contracted Quantity (ACQ) of 24.50 Lakh Ton per annum. As per the Commission's tariff order dated 12.06.2013 for Vedanta, the coal procured through administered price mechanism on the basis of long-term PPA shall be utilized for the State.
- Though, M/s. Vedanta Limited availed concessional linkage coal from MCL during the entire period of FY 2017-18 for supply of State entitlement of power to GRIDCO, it had not supplied power to the State and utilized the same for generating power from its converted CGP Units for its own captive consumption at SEZ Unit unwarrantedly at the cost of legitimate rights of the consumers of the State. This is gross violation of FSA as well as PPA provision by M/s. Vedanta Limited. The issue of non-supply of power to the State was informed to MCL vide GRIDCO letter dated 22.03.2018.
- In view of the above, M/s. Vedanta Limited may be directed to ensure that the linkage coal supplied under FSA is properly and completely utilized for supply of power to the State/GRIDCO every month through auditor certificate, under intimation to the Commission.

**Vedanta's View**

- M/s. Vedanta Limited submitted that as per the directions contained in Para-35 (d) of order dated 27.01.2016 in Case No. 21/2015 passed by the Commission, coal to be used for supplying power to GRIDCO under the PPA shall be linkage coal. Accordingly, GRIDCO is required to pay variable charges on the quantum of power generated as per the linkage coal received by M/s. Vedanta Limited. The generation from Unit-II was never at 85% capacity due to shortfall in linkage coal allocation to IPP-Unit-II. GRIDCO has itself validated that it has received the appropriate quantum of power against the quantum of

coal supplied by M/s. MCL to M/s. Vedanta Limited. The alleged under utilization of coal was on account of the breach of ash pond resulting in stoppage of operations of Unit-II & III by State Pollution Control Board. Hence, the issue of receiving linkage coal and non-supplying State entitlement of power is wrongly worked out by GRIDCO and carry no merits.

**Commission's Observation:**

- The Commission observed that as per the allegation of GRIDCO M/s. Vedanta Limited has availed linkage coal from MCL during the FY 2017-18 but had not supplied State entitlement of power to GRIDCO to the extent of linkage coal availed. But as stated by M/s. Vedanta Limited under utilization of coal during the FY 2017-18 was on account of the breach of ash pond and stoppage of operations of Unit-2 & 3. The linkage coal availed by M/s. Vedanta Ltd. has been utilized in converted CGP units 1 & 4 during stoppage of unit-2 due to breach of ash pond. From the existing PPA it is observed that the capacity allocated to GRIDCO shall be upto 25% + 7%/5% of the installed capacity of the thermal power station of M/s. Vedanta Ltd. GRIDCO might have received less power from M/s. Vedanta Ltd. than the contractual quantum. Therefore, GRIDCO is entitled for compensation for less availability of power from M/s. Vedanta during the breach of ash pond. This compensation shall be computed as per the procedure mentioned in this order for less or no supply of power by M/s. Vedanta to GRIDCO. GRIDCO is entitled to purchase power from the IPP of M/s. Vedanta Ltd. to the extent of power generated from the linkage coal since it is supplied to M/s. Vedanta for State use and GRIDCO may purchase power beyond that upto the state entitlement if it is commercially cheaper. GRIDCO is directed to plan accordingly sufficiently ahead intimating the same to M/s. Vedanta Ltd. Further, the Commission directs M/s. Vedanta Limited to supply State entitlement of power to the extent of linkage coal availed from MCL in future without fail.

11. With the above observations on different disputed issues raised by GRIDCO and M/s. Vedanta Limited, the Commission directs both the parties to make necessary amendments in the consolidated PPA dated 19.12.2012 keeping in view the directions of the Commission in its order dated 27.01.2016 passed in Case No. 21/2015.

12. Further, M/s. Vedanta Limited has prayed the Commission for an interim direction to GRIDCO for payment of his arrear dues. The Commission directs GRIDCO to reconcile the arrear amounts of M/s. Vedanta Limited at the earliest in view of the above observations of the Commission and accordingly settle the payments within two months from the date of issue of this order.
13. Accordingly, the case is disposed of.

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

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