

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021  
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**Present: Shri U. N. Behera, Chairperson  
Shri S. K. Parhi, Member**

**Case No. 38/2019**

Confederation of Captive Power Plant, Odisha (CCPPO) ..... Petitioner  
Vrs.  
GRIDCO Limited & Others ..... Respondents

**In the matter of:** **An application under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 23.11.2010 of the Commission passed in Case Nos. 117 & 118 of 2010 and other various related orders of the Commission by GRIDCO w.r.t. non-payment against injection of inadvertent power to grid by the CGPs at the State Hydro Pool Cost for the period upto 08.04.2019.**

**For Petitioner:** Shri Bibhu Charan Swain, the authorized representative of the petitioner, Shri Ashok Kumar Parida, Consultant,  
Shri H. R. Das, Secretary, M/s CCPPO  
Shri S. C. Das, Jt. Secretary, M/s. CCPPO,

**For Respondents:** Shri Tapas Pattnaik, DGM (PP), GRIDCO Ltd,  
Shri Durga Madhab Sahu, Dy. Manager (Elect.), GRIDCO Ltd.

**ORDER**

**Date of hearing: 06.08.2019**

**Date of order: 23.10.2019**

The Petitioner, Confederation of Captive Power Plant, Odisha (CCPPO) has filed the present case under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 23.11.2010 of the Commission passed in Case Nos. 117 & 118/2010 and other related orders of the Commission by GRIDCO with respect to non-payment of inadvertent power supplied to the grid by the CGPs at the rate of State hydro pooled cost for the period upto 08.04.2019.

2. Confederation of Captive Power Plant, Odisha (CCPPO) submitted that the Commission framed a CGP Pricing Policy on 14.03.2008 for procurement of surplus power from CGPs of Odisha and assigned definitions to the terms “inadvertent power” in the aforesaid policy. Thereafter to regulate such pricing policy, directions were issued by the Commission in its various orders i.e Order dated 23.11.2010 in Case No 117 & 118 of 2010, Order dated 29.08.2011 in Case No. 22 of 2011, Order

dated 04.07.2015 in Case No. 54 of 2011, order dated 29.12.2015 in Case No. 26 of 2015, etc. Further, the Commission had revised the firm power pricing in those orders from time to time for the period between 14.03.2008 and 08.04.2019.

3. Subsequently on 09.04.2019, the Commission has framed a new CGP Pricing Policy for procurement of surplus power from CGPs in case no. 62/2017, wherein all the earlier orders on "CGP Pricing" including the orders referred above are repealed w.e.f. 09.04.2019. However, in all the previous orders from 14.03.2008 to 08.04.2019, the Commission had directed that the Power injected by CGPs without a day ahead schedule would be treated as the injection of inadvertent power and would be paid at Hydro Pooled Cost determined by the Commission for the respective financial year. In disobedience to the Commission's directions, GRIDCO has not yet paid to CGPs for supply of inadvertent power. Hence this application has been filed by CCPPO under Section 142 of the Electricity Act 2003 for non-payment against injection of the inadvertent power by the CGPs for the period up to 08.04.2019.
4. The Commission heard the matter on 06.08.2019 and directed the petitioner to file their written note of submission by 20.08.2019, stating therein the name of the CGPs those who have not received payment up to June, 2015 from GRIDCO Ltd. GRIDCO Ltd. was also directed to file its written note of submission, if any, by the above date.
5. In compliance to the above direction of the Commission, the petitioner in its written note submitted that CGPs of Odisha have been established for captive use of power generated by them, but, it has also helped the Odisha Utilities all along when the state had no major IPP and also during breakdown/ shutdown of State Generators. There are two sides of the captive power plants operating anywhere in the State and also in the country. The demand side of the Captive Power Plants is governed by the requirement of the parent industry to have the quality power. The supply side is influenced by the tariff and open access. The CGPs of Odisha, at one juncture were treated as a major powerhouse for the State. Irrespective of imposition of Section 11, the CGPs have always come forward to supply Power to GRID during deficit situations and have made substantial contribution to the economic growth of the State.
6. Further, the Petitioner submitted that the Commission had framed a CGP Pricing Policy on 14.03.2008 for procurement of surplus power from CGPs of Odisha and assigned definitions to the terms inadvertent power and infirm power in the aforesaid policy. Thereafter to regulate such pricing policy, directions were issued by the Commission in its various orders. The Commission fixed the final pricing order for

the power to be procured from the CGPs of the State by GRIDCO in its order 23.11.2010 in Case Nos. 117 & 118 of 2010. The Commission has also revised the firm power pricing in its various orders from time to time for the period between 14.03.2008 and 08.04.2019.

7. Subsequently on 09.04.2019 in Case No. 62/2017, the Commission has framed a new CGP Pricing Policy for procurement of surplus power from CGPs, by which all the earlier orders on CGP Pricing have been superseded w.e.f. 09.04.2019. However, in all the previous orders from 14.03.2008 to 08.04.2019, the Commission had directed that the Power injected by CGPs without a day ahead schedule would be treated as the injection of inadvertent power and would be paid at Hydro Pooled Cost determined by the Commission for the respective financial year. In spite of that GRIDCO has not yet paid anything to CGPs for supply of inadvertent power in contravention to the order of the Commission. Hence this application has been filed by CCPPO under Section 142 of the Electricity Act, 2003 for non-payment against injection of the inadvertent power by the CGPs for the period up to 08.04.2019 with a prayer to issue necessary direction to GRIDCO in this regard.
8. The Petitioner submitted that the Commission in its order in Case No. 72/2007 dated 14.03.2008 in the matter of CGP Pricing Policy for harnessing of surplus power from Captive Generating Plants had defined Firm Power, Non-Firm Power and Inadvertent Power. In the said order the Commission had held that the power injected by the CGPs without giving day ahead schedule would be treated as inadvertent injection of power and would be priced equal to the pooled cost of hydro power of the State. Further, the Commission had passed interim order dt.28.02.2009 in Case Nos. 06/2009 to 20/2009 in the matter of comprehensive pricing policy for sale of surplus power from CGPs where the Commission had directed that for injection of inadvertent power, the payment would be equal to the pooled cost of hydro power of the State and would be applicable to all the Industries including those who had signed the Agreement with GRIDCO. The Commission had passed the common order dt. 23.11.2010 in Case Nos. 117 & 118/2010 in the matter of implementation of directives of OERC regarding Comprehensive Pricing Policy for procurement of surplus power from Captive Generating Plants where the Commission directed that the inadvertent power/infirm power within the Operating Frequency Band of 49.50 to 50.18 HZ supplied by the CGPs would be paid at the pooled cost of State hydel power.

9. The Petitioner further submitted that though no commercial Agreement was signed by CGPs before or after commercial declaration, still power was supplied to the GRID and payment for the power so supplied i.e. infirm or inadvertent power was being paid to CGPs based on the orders of the Commission. The Commission has held in Case Nos. 117 and 118 that for all practical purpose the injection of firm power and inadvertent power would be treated under same commercial principle. Hence no agreement is necessary for payment of inadvertent injection. The payment is to be released by GRIDCO based on this order of the Commission.
10. Further, the Commission had passed the order dt.12.05.2015 in case No. 30/2013 in the matter of non-compliance of /violation of order dated 01.10.2012 in Case No. 86/2011 regarding Comprehensive Pricing Policy for procurement of surplus power from Captive Generating Plants where the Commission directed GRIDCO to clear/settle all the dues of the CGPs and complete the reconciliation process within 02.07.2015 and submit the compliance report by 05.07.2015. From the above orders of the Commission it is clear that as per the prevailing CGPs pricing policy, for the period between 14.3.2008 till 08.4.2019 any inadvertent injection within the operating frequency band of 49.50 Hz to 50.18 Hz shall be treated as inadvertent power or infirm power and paid at the pooled cost of state hydro for the respective financial year.
11. The Petitioner submitted that GRIDCO and CCPPO had signed Minutes of Meeting (MoM) dt.09.09.2016 there by agreeing to the operating frequency range for the purpose of reconciliation of bills of CGPs and Co-generating plants from 17.2.2014 onwards to be considered from 49.70 Hz to 50.05 Hz keeping all other conditions intact as per orders of OERC. The said MoM signed between GRIDCO and CCPPO stands valid as of date which needs to be complied with. The Petitioner prayed that Commission may direct GRIDCO to make payment to all the CGPs for inadvertent injection of Power to Grid at the prescribed rate for respective financial year in respect of State Hydro Pooled Cost for the period upto 08.04.2019.
12. The respondent GRIDCO submitted that, the petitioner has filed the present petition under Section 142 of Electricity Act, 2003 for non-compliance of order dated. 23.11.2010 in Case No.117&118 of 2010 with respect to non-payment against injection of inadvertent power up to 08.04.2019 without any subsisting contract and scheduling by SLDC. In this regard it is to mention that M/s SMC Power Generation Ltd had filed a petition (No. 26 of 2015) before the Commission under Section 142 of

Electricity Act, 2003 for non-implementation of order dated 12.05.2015 of OERC passed in case No. 30/2013. The Commission had passed the order on the above noted case on 29.12.2015 and directed that the above order would be applicable to all the similarly placed CGPs and co-generation plants. In compliance to the above order, GRIDCO has reconciled and settled the dues of all the CGPs and Co-generation plants supplying power to GRIDCO up to June 2015 and March 2015 respectively i.e. up to the period for which GRIDCO was having subsisting contract with the above CGPs.

13. GRIDCO Ltd. further submitted that prior to the present filing, three members of CCPPO, namely, M/s. Mahavir Ferro Alloys Pvt. Ltd., M/s AARTI Steel Ltd., M/s. BPSL filed three separate petitions before the Commission under section 142 of Electricity Act, 2003 which were admitted respectively as Case Nos. 16/2018, 27/2017 and 48/2017. In the above three cases, the prayer of the petitioners were same as that of the prayer in the present petition. The above three cases i.e. Case Nos. 16/2018, 27/2017 and 48/2017 were disposed of by the Commission vide orders dated 09.04.2019, 06.06.2019 and 09.07.2019 respectively.
14. GRIDCO further submits that the above three cases i.e. Case Nos. 16/2018, 27/2017 and 48/2017 were disposed of by the Commission with the following observations and directions, which are enumerated below;
  - i) *Any supply from an independent generator or a CGP can only be effected through a contract. That means the buyer and the sellers both have to agree for purchase and sale of power.*
  - ii) *Power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation /contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and valid schedule so that safety of the Grid at no situation is affected.*
  - iii) *Power systems cannot be a dumping ground for unwarranted power.*
  - iv) *Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the Grid.*

- v) *Two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline.*
  - vi) *GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract*
15. GRIDCO submitted that from the above observation of the Commission, CGPs are not eligible to get any payment for the inadvertent injection when there is no subsisting contract between GRIDCO and CGPs and no scheduling by SLDC. GRIDCO has already paid all the dues including the payment for inadvertent injection to all the CGPs and Co-generation plants up to June 2015 and March 2015 respectively i.e. up to the period for which GRIDCO was having subsisting contract with the CGPs. They have got no liability to pay anything to the petitioner towards un-authorised injection of power by them. Hence, the petition filed by the petitioner is devoid of any merit and liable for outright rejection.
16. Heard the parties at length. Their written notes of submission are taken into record. Regarding supply of surplus power from the CGPs, the Commission is of the view that any supply from an independent generator or a CGP can only be effected through a contract. Due to fluctuation in power requirement of the parent industry, inadvertent power is injected into the Grid. This injection is consequential to an obligation to supply power which is effectuated through a contract. We have already dealt with this matter in Case No. 16/2018 dated 09.04.2019 where the Commission on the same issue has held as under.
- “13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.*

14. *In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract. xxx x x x x x x x.*”
17. In view of the above findings of the Commission, it is directed that the bills of the Petitioner be reconciled by both the parties within one month and the reconciled bills be paid to the Petitioner within 15 days thereafter.
18. The case is disposed of aaccordingly.

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

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