

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

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

Case No. 65/2019

GRIDCO Ltd.	Petitioner
Vrs.		
NTPC & Others	Respondents

In the matter of: **Application under Section 86 of the Electricity Act, 2003 read with Section 21 of the OER Act, 1995 and other enabling provisions for approval of Power Purchase Agreement (PPA) executed between NTPC Ltd. and GRIDCO Ltd. dated 27.12.2010 for purchase of power from Stage-I (2x800MW) and Stage-II (2x800MW) of Darlipali Super Thermal Power Station (Darlipali STPS) of NTPC in the Eastern Region.**

For Petitioner: Shri Kulamani Biswal, Advocate on behalf of GRIDCO Ltd.

For Respondent: Shri G. C. Mohapatra, the representative of M/s. NTPC Ltd., Shri R. P. Mahapatra and Ms. Niharika Pattanaik, ALO, DoE, GoO.

ORDER

Date of hearing: 05.01.2021

Date of order: 13 .07.2021

The petitioner GRIDCO Limited has filed the present application seeking approval of Power Purchase Agreement (PPA) executed between NTPC and GRIDCO on 27.12.2010 for purchase of power from Darlipali STPS Stage-I (2x800 MW) and Stage-II (2x800 MW) situated in the Sundargarh District of Odisha.

2. GRIDCO has submitted that earlier it had filed a joint application seeking approval of 14 nos. of PPAs signed with NTPC Ltd. including the present one, which was registered as Case No. 43/2011. The Commission vide its order dated 20.07.2016 disposed of the case with the direction to make fresh submission of individual PPA separately within three months incorporating the observations/directions of the Commission in its interim order dated 16.08.2011. GRIDCO could not file the application within stipulated time of three months as GRIDCO envisaged that there will be sufficient availability of surplus power in the State if all the PPAs will be executed. The matter was placed before GRIDCO's Board for obtaining approval

regarding surrender of allocated power from NTPC stations outside the State. After getting approval from the Board, GRIDCO vide its letter dated 16.04.2014 requested DoE, GoO to pursue with MoP, GoI for surrendering allocated power from NTPC stations located outside the State. With the persuasion of State Government, Odisha share of 155 MW from Nabinagar STPS-I and 166 MW from Barh STPS-II has been re-allocated in favour of Uttar Pradesh and Bihar respectively. However, GRIDCO prefers to retain its allocated share of 800 MW from Darlipali STPS-I and another 800 MW from Darlipali STPS-II on the following grounds:

- (i) Captive Coal Mines namely 'Dulang' has been allocated in favour of Darlipali STPS which is only 9 Kms. away from the plant. Hence, the fuel cost including transportation cost will be less causing low Energy Charge Rate (ECR),
- (ii) As per the terms and conditions of the mega power policy of Darlipali STPS, the import of capital equipments for the power plant would be free of custom duty,
- (iii) Deemed export benefits is also available to this project under the Foreign Trade Policy, price preference of 15% has been given to domestic PSU Bidders, and
- (iv) The income tax holiday regime can also be availed for the project.

The above concessions/benefits will bring down the capital cost of the project resulting in lower fixed cost to be payable by GRIDCO. On account of reduction of both fixed cost and ECR, the tariff burden on the consumers will be reduced.

3. The Commission in its order dtd. 20.07.2016 in Case No.43 of 2011 had made certain observations on the issues of (i) utilisation of high cost power from NTPC stations when GRIDCO has entered on PPA with many IPPs inside the State, (ii) high variable costs of NTPC stations as per the formula of CERC Regulations and (iii) allocation of the 15% unallocated capacity of NTPC stations among the beneficiaries of the eastern region. Replying to the above observations of the Commission, GRIDCO in its present petition has submitted that GRIDCO is the state designated entity for procurement of power on behalf of DISCOMs to meet the state demand as per its service obligations under Section 43 of Electricity Act, 2003. Though GRIDCO had entered into PPAs with number of IPPs inside the state, only three numbers of IPPs

namely, M/s. Vedanta Ltd., M/s. GMR Kamalanga Ltd., and M/s. JITPL have so far been commissioned. Out of these M/s. JITPL is now not supplying power to GRIDCO and challenged the MoU with GoO and PPA with GRIDCO at different judicial forums. GRIDCO had entered into PPA with NTPC on 27.12.2010 to purchase power from Darlipalli STPS, which was proposed to be established in the State of Odisha, to meet the future requirement of power as forecast by CEA in its 17th EPS. The cost of this generating station will be relatively low compared to others because of the captive coal mines and availability of some fiscal concessions/ benefits under mega power policy of GoI resulting in low capital cost. GRIDCO has executed PPA for both Stage-I & Stage-II of Darlipalli STPS, but NTPC has not yet submitted the techno-economic feasibility, scheduled date of commissioning and projected tariff for Stage-II.

4. Regarding the issue of high variable costs of NTPC stations, GRIDCO has submitted that the variable cost or Energy Charge Rate (ECR) is computed by NTPC basing on the formulae / operating norms specified by CERC in their Tariff Regulations from time to time. CERC Tariff Regulations, 2014 had stipulated that the Energy Charge Rate (ECR) was to be calculated on the basis of GCV of coal measured on 'as received basis'. CERC in their order dated 25.01.2016 had further clarified that the 'as received' GCV should be measured by taking sample of coal from the loaded wagons at the generating station end. GRIDCO has filed appeal against the said order of CERC dated 25.01.2016 in Appeal No. 238 of 2017 before APTEL urging that 'as received' GCV should be measured at colliery end instead of generating station end which is in consonance with Fuel Supply Agreement (FSA) between NTPC and coal company. Further, GRIDCO in its views/reply against the consultation paper to CERC Tariff Regulations, 2019, Draft CERC Regulations, 2019 and public hearing on Draft CERC Regulations, 2019 had strongly objected against the provisions of the stage of 'as received' GCV of coal at the generating station end and argued that the stage of 'as received' GCV is at colliery end itself as per the terms and conditions of FSA. However, in spite of the above objections from GRIDCO and most of the beneficiaries, CERC Tariff Regulations, 2019 was published stipulating that 'as received' GCV means the GCV of coal as measured at 'the unloading point of the thermal generating station'. After publication of the Tariff Regulations, 2019, CERC came out with 'Terms of Reference' for minimisation of GCV loss from colliery end

to generating station end through risk allocation between coal company, Railways and the generating station. However, GRIDCO is in the process of challenging the said Regulation of CERC pertaining to measurement of GCV before Hon'ble High Court of Orissa.

5. Regarding the issue of allocation of 15% unallocated capacity of NTPC generating stations, GRIDCO has submitted that it is the prerogative of Govt. of India to allocate the unallocated 15% share to any beneficiary irrespective of the region. The clause 2.2.2 of the PPA between NTPC Ltd. and GRIDCO Ltd. in respect of Darlipalli STPS stipulates as under also confirms this:

“Fifteen percent capacity of the station has been kept unallocated at the disposal of Govt. of India/Competent Authority and shall be subject to allocation from time to time as per the decision of GoI/Competent Authority and such further allocation will form part of the contracted capacity. Out of the unallocated capacity, balance if any, after such allocation by GoI/Competent Authority, shall be deemed to have been allocated and thereby forming part of contracted capacity to various Bulk Power Customer(s) in proportion to their contracted shares.”

6. In its rejoinder, GRIDCO has submitted that NTPC in its tariff application before CERC has projected the tariff at Rs.3.41/Kwh (fixed cost + variable cost) in line with CERC Tariff Regulations, 2019 for the control period of 2019-2024. The actual tariff has not yet been determined by CERC. NTPC has projected the fixed cost as Rs.2.07/Kwh and the variable cost as Rs.1.34/Kwh based on the previous three months' data at the time of filing of the petition. GRIDCO submitted that the tariff petition filed by NTPC is subject to scrutiny and approval of CERC through public hearing. After detailed study of the proposal of the NTPC, GRIDCO will raise the relevant issues in the public hearing to reduce the cost in the interest of the state consumers. However, NTPC is now billing the provisional fixed charge @ Rs.2.11/Kwh computed at 85% of scheduled generation and ECR using CERC formula basing on the coal price, GCV of coal and other factors. Till August, 2020 the weighted average ECR of Darlipalli STPS was Rs.1.05/Kwh during FY 2020-21. The Energy Charge Rate now claimed is lesser than what had been projected during filling of petition by NTPC before CERC. Since the ECR is very low, therefore, scheduling of power is done on the basis of ECR and comes under merit order dispatch. The capital cost shall definitely go down due to zero custom duty for import of capital equipment, deemed export benefit, 15% price preference to domestic PSU bidders and income tax benefit etc.

7. GRIDCO has further submitted that both GRIDCO and the State Govt. have taken steps for surrender of allocation of power from the NTPC generating stations outside Odisha to reduce the liability of fixed cost burden on the state consumers. The MoP, GoI have already accepted the surrendered share of power of Odisha from the Nabinagar-I (155 MW) and Barh STPS-II (166 MW) which have been reallocated to other states. However, GRIDCO wants to retain the share of power from Darlipalli STPS due to the various concessions/benefits which will bring down the capital cost of the project resulting in lower fixed cost and energy charge rate and hence the tariff burden on the state consumers will be reduced. In view of the above GRIDCO has prayed the Commission for approval of the instant PPA executed between GRIDCO and NTPC for procurement of power from Darlipalli STPS.
8. The respondent-NTPC Ltd. has submitted that the PPA dtd.27.12.2010 has been signed by GRIDCO Ltd. and NTPC Ltd. in respect of the sale of power from 3200 MW (2x800 MW + 2x800 MW) Darlipalli STPS in Sundergarh district in Odisha. Odisha has 50% power allocation from this power station. Unit-I of the power station has been declared under commercial operation w.e.f. 01.03.2020. NTPC Ltd. has filed tariff petition before CERC for determination of tariff for Darlipalli STPS Stage-I (2x800 MW). Presently, NTPC is billing at the provisional fixed charge of Rs.2.11/Kwh computed at 85% scheduled generation based on the tariff petition filed before CERC. Energy charges are being billed as per CERC Tariff Regulations, 2019 and the average energy charge rate billed during the period from April, 2020 to December, 2020 was Rs.1.05/Kwh. This provisional billing is subject to adjustment on determination of tariff by CERC as per provisions of Regulation 10(7) of CERC Tariff Regulations, 2019 and clause 5.1.3 of the PPA. In addition to above other statutory charges such as ED, Water Cess, RLDC Fees etc. are also being billed as per CERC Tariff Regulations, 2019. NTPC has submitted that it has no objection to the prayer of the petitioner for approval of the instant PPA executed between GRIDCO and NTPC for procurement of power from Darlipalli STPS as per the terms and conditions of the PPA.
9. The respondent Sri R. P. Mahapatra has submitted that as per the submission of the petitioner-GRIDCO it has executed PPA with NTPC for both Stage-I (2x800 MW) and Stage-II (2x800 MW) of Darlipalli STPS. But NTPC has not submitted the techno-economic feasibility report of Stage-II of the power plant, the scheduled date

of commissioning and the projected tariff of power generated from Stage-II. As per news report published in New Indian Express in the first week of January, 2021 it is known that neither techno-economic feasibility nor the issue of land acquisition for Stage-II have been settled. It is also known that construction of railway line for transportation of coal, erection of transmission line and construction of Merry Go Round for coal dispatch to the plant have been delayed due to problem of land acquisition. Therefore, in view of the above reasons, the PPA for Stage-II cannot be approved at this stage along with Stage-I.

10. Sri Mahapatra has submitted that in its submission, GRIDCO has tried to justify the excess capacity contracted by it based on the 17th Electric Power Survey (EPS) of CEA published in March, 2007, forecasting the long term power requirement for the period 2011-22. The CEA forecast for peak demand of the state as on 2021-22 would be 10074 MW. But the 18th EPS of CEA has projected much lower demand and energy requirement for Odisha than the 17th EPS. Therefore, GRIDCO perhaps for this reason, has requested the State Government to move Government of India for de-allocation of NTPC power from the stations located outside the state. It is not understood why GRIDCO is referring to 17th EPS when much lower projection has been made in the 18th EPS of CEA. Further as evident from the OERC approval of peak demand i.e. SMD in MVA from FY 2011-12 to FY 2021-22, the actual growth of demand in the state was even much less than the 18th EPS of CEA. As the state designated entity, it is the responsibility of GRIDCO to project the power demand accurately and also source the same under merit order. Further, GRIDCO has not submitted whether they have made their submission to CERC on the petition of NTPC and if so what was the tariff suggested by GRIDCO. GRIDCO should confirm that it has made submission before CERC relating to IDC for delayed commissioning of the project.
11. In view of the above Sri Mahapatra has prayed the Commission not to approve the PPA and in case the Commission approves the PPA, it should be only for Stage-I (2x800 MW) and not for Stage-II. Further, procurement of power from Stage-I of Darlipalli STPS for the state consumers should be made only if it is within the merit order. Any capacity charge paid by GRIDCO for not sourcing power from other power stations having valid PPA or even Darlipalli STPS, should not be considered in the ARR of GRIDCO for determination of BSP. It has to be fully borne by GRIDCO.

12. The parties were heard and their written notes of submission taken into record. The Commission observed that GRIDCO in consultation with GoO has decided to surrender the allocated share of power from new NTPC stations outside the state. Accordingly, the state Government have taken initiative and are pursuing with the Government of India for de-allocation of state share of power from new NTPC Thermal Generating Stations outside the state. GRIDCO has entered into PPA with NTPC on 27.12.2010 for purchase of 50% share of power from Darlipalli STPS Stage-I (2x800 MW) and Stage-II (2x800 MW). GRIDCO has submitted that captive coal mines close to the power station have been allotted in favour of Darlipalli STPS which will reduce cost of coal including transportation cost and consequently the ECR will be low. Further, under mega power policy of GoI Darlipalli STPS is entitled for concessions/benefits in custom duty for import of capital equipments, deemed export benefits under foreign trade policy and price preference of 15% as a domestic PSU and also the power station can avail income tax holiday regime. These concessions/benefits together will bring down the capital cost of the project resulting in lower fixed cost to be payable by GRIDCO.
13. Further, as per the submission of GRIDCO, NTPC has filed tariff petition before CERC for Darlipalli STPS Stage-I (2x800 MW) and in its submission NTPC has projected the tariff of Rs.3.41/Kwh (both fixed cost and variable cost). The variable cost filed by NPTC in its petition is Rs.1.34/Kwh which is based on previous three months data during the time of filing the petition. However, ECR claimed by NTPC now is as per actual based on the coal price, GCV of coal and other factors as per CERC formulae. The weighted average ECR during the period from April, 2020 to December, 2020 was Rs.1.05/Kwh. NTPC in its submission has stated that presently they are billing provisional fixed charge @Rs.2.11/Kwh based on the tariff petition computed at 85% scheduled generation and energy charges are being billed as per CERC Tariff Regulations, 2019. The average ECR billed during April, 2020 to December, 2020 was Rs.1.05/Kwh. The Commission observes that the ECR of Darlipalli STPS is comparatively lower than the other thermal stations from which GRIDCO is now purchasing power. The fixed cost is yet to be determined by CERC.
14. Further, from the submission of the petitioner GRIDCO, it is found that NTPC has not submitted the techno economic feasibility of Darlipali STPS Stage-II, scheduled date of its commissioning and the projected tariff. Therefore, the Commission observes

that commissioning of Unit-III & IV (Stage-II) will be delayed. However, GRIDCO has executed PPA for both Stage-I and Stage-II of the project together. The Commission has further observed that GRIDCO in its submission in Case No. 67/2019 has stated that it has already given up its share from Barh-II and Nabinagar-II power stations of NTPC and now GRIDCO and Government of Odisha have communicated to Government of India to give up their share from KBNUL and Barh-I power stations of NTPC. Further, the contracted capacity of about 1644 MW shall be phased out by 2026-27 in view of the completion of useful life of some of the power stations. These are FSTPS-I (170 MW by July 2021), KhSTPS-I (132 MW by August 2021), TSTPS-I (323 MW by July 2022), TTPS (460 MW by 2022-23), OPGC-I & II (420 MW by 2026) and Barh-I (139 MW for which GRIDCO is pursuing for de-allocation). It is observed that after phasing out of the above said thermal power stations, the State may require the power from Darlipali STPS Stage-II keeping in view the increasing demand of the State. Approval of PPA for Stage-II shall also accelerate its development due to firm commitment by GRIDCO.

15. In view of the above, the Commission approves the instant PPA dated 27.12.2010 executed between GRIDCO and NTPC for procurement of 50% State share of power from Darlipali STPS Stage-I (2x800 MW) and Stage-II (2x800 MW) of NTPC. However, the Commission directs GRIDCO to diligently participate in the proceeding of NTPC Tariff Petition at CERC for determination of appropriate fixed cost of the project.
16. Accordingly, the case is disposed of.

Sd-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson