

ODISHA ELECTRICITY REGULATORY COMMISSION
BUDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751021

Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member

Case No. 09/2020

M/s. Jindal Stainless Ltd.	Petitioner
Vrs.		
M/s. GRIDCO Limited	Respondent

In the matter of: **Application under Sec. 86(1)(f) of the Electricity Act, 2003 read with Rules and Regulations made there under seeking direction to GRIDCO Ltd. for payment of outstanding dues and delayed payment surcharge thereon.**

For Petitioner: Shri P. P. Mohanty, Advocate.

For Respondents: Shri P. K Mohanty, Sr. Advocate.

ORDER

Date of Hearing: 26.04.2022

Date of Order: 23.05.2022

The petitioner, M/s. Jindal Stainless Ltd. (M/s. JSL), is a producer of stainless steel in India and has set up a fully integrated stainless steel plant at Kalinga Nagar Industrial Complex, Duburi in the District of Jajpur, Odisha. It has also set up a captive power plant of 250 MW within its plant premises. In the present petition, M/s. JSL has prayed the Commission to direct GRIDCO for payment of its outstanding dues of Rs.44.17 Crore as principal/arrear and Rs.89.30 Crore as the Delayed Payment Surcharge (DPS) till third quarter of FY 2019-20 towards supply of power to the State grid from its CGP.

2. The petitioner has submitted the followings:

- (a) The Commission through a consultative process followed by public hearing on 03.01.2008 had issued a policy of harnessing of surplus power from Captive Generating Plants (CGPs), vide the order dated 14.03.2008 in Case No.72 of 2007. In the year 2009 there was an acute power shortage in the State and pursuant to the above Order of the Commission, GRIDCO-Respondent No.2 herein, filed number of applications before this Commission for procurement of

surplus power from the various CGPs to meet the demand of the State. These applications were registered as Case No.6 of 2009 to 20 of 2009, where in Case No.7 of 2009 relates to the present petitioner. The Commission in its interim order dated 28.02.2009, had fixed the procurement price of firm power from the CGP at Rs.3.00/kWh w.e.f. 01.03.2009 and the same for co-generation plants was fixed at Rs.3.10/kWh. In respect of injection of inadvertent power, the price was equal to the pooled cost of hydro power of the State.

- (b) GRIDCO had filed a review application against the above order of the Commission which was registered as Case No. 59/2009. The Commission vide its order dated 27.06.2009 in Case No. 59/2009 had directed as follows:

“8 (iii) x x x x x x x

Considering the constraints under which both GRIDCO and CCPPO are operating, Commission directs that a rebate of 2% would be allowed to GRIDCO by CCPPOs, if the payment is made within four working days (except holidays under NI Act) of raising bills and 1% rebate would be allowed if the payment is made within a period of 30 days (counted from the date of presentation of bill). In case payment of bills by the GRIDCO is delayed beyond a period of 30days from the date of presentation of bill, a late payment surcharge @ 1.25% per month shall be levied by CGPs on the unpaid amount from the date of presentation of bills.”

- (c) Thereafter, GRIDCO had again filed an application before this Commission with prayer to reduce the price/rate of procurement of surplus power from CGPs/Co-generation plants and this application was registered as Case No. 117/2010. The Commission vide its order dated 23.11.2010 had disposed of the case with the following directions:

“31. Xxxxxxx. However, the Commission accepts GRIDCO’s contention that any power injected by CGPs/Co-generation plants to the State Grid at 50.20 Hz and above, determined on the basis of actual meter reading shall be priced at “Zero” cost. It is expected that any captive generator shall back down its generation upto its captive consumption including open access allowed if any at higher frequency at 50.20 Hz and above.

32. The Commission has also examined the request of GRIDCO for fixing a minimum threshold quantity in MW specified for acceptance of Schedule from CGPs by SLDC.

Xxxxxxx.

As the request of GRIDCO to fix a threshold quantity in MW specified for acceptance of Schedule from CGPs by SLDC is not in conformity with the OGC, the Commission is not inclined to accept the suggestion of GRIDCO.

33. XXXXXXXXX. Thus after considering the present price of power through UI and the Power Exchange along with the difficulties of GRIDCO and the Captive/Co-generating Plants, the Commission directs and stipulates the rates for Captive/Co-generation Plants supplying their 100% surplus Firm Power to GRIDCO as under:

- (a) The price of supply upto 7.3 MU per month (~ 10 MW Avg. and below) would be Rs.2.75 per KWh.*
- (b) The price for supply of incremental energy above 7.3 MU/month and upto 36 MU/month (~ above 10 MW and upto Avg. 50 MW) would be Rs.3.10 per KWh.*
- (c) In respect of supply of incremental energy beyond 36 MU/month (above ~ 50 MW) the incremental energy would be priced at Rs.3.25 per Kwh.*
- (d) The Captive/Co-generation Plants should operate on “Must Run” condition and any injection over the implemented schedule at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid.*
- (e) The Captive/Co-generation Plants who would supply inadvertent power/infirm power within the Operating Frequency Band of 49.50 to 50.18 HZ would be paid at the pooled cost of State hydel power which is 62.51 Paise/KWh for FY 2010-11 as approved by the Commission and any inadvertent injection at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid. Any injection over the implemented schedule at a frequency within the Operating Frequency Band of 49.50 to 50.18 HZ should also be paid at 62.51 Paise/KWh during FY 2010-11 (from 10.11.2010 to 31.03.2011).*

34. The Commission further directs and stipulates the rates for Captive/Co-generation Plants supplying their 60% and above but below 100% of surplus Firm Power to GRIDCO after availing open access upto 40% as under:

- a. The price of supply upto 7.3 MU per month (~ 10 MW Avg. and below) would be Rs.2.75 per KWh.*
- b. The price for supply of incremental energy above 7.3 MU/month and upto 36 MU/month (above ~ 10 MW and upto Avg. 50 MW) would be Rs.3.00 per KWh.*
- c. In respect of supply of incremental energy beyond 36 MU/month (above average 50 MW), the incremental energy would be priced at Rs.3.20 per Kwh.*
- d. The Captive/Co-generation Plants should operate on “Must Run” condition and any injection over the implemented schedule at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid.*
- e. The Captive/Co-generation Plants who would supply inadvertent power/infirm power within the Operating Frequency Band of 49.50 to 50.18 HZ would be paid at the pooled cost of State hydel power which is 62.51 Paise/KWh for FY 2010-11 as approved by the Commission and any inadvertent injection at a frequency of 50.20 Hz and above shall be*

considered as “Free Power” to the State Grid. Any injection over the implemented schedule at a frequency within the Operating Frequency Band of 49.50 to 50.18 HZ should also be paid at 62.51 Paise/KWh during FY 2010-11 (from 10.11.2010 to 31.03.2011).”

- (d) Being aggrieved by the non-implementation of the above order by GRIDCO, the Confederation of Captive Power Plant, Odisha (CCPPO) filed an application before this Commission under Section 142 of the Electricity Act, 2003 which was registered as Case No. 22 of 2011. The Commission vide its order dated 29.08.2011 in Case No. 22 of 2011 have clarified on the issues of injection of inadvertent power, infirm power and issues of DPS etc.
- (e) Thereafter, without complying the above order of the Commission, on 27.10.2011, the respondent-GRIDCO filed an application before this Commission for review of the Commission’s order dated 29.08.2011 passed in Case No. 22 of 2011 which was registered as Case No. 86 of 2011. The Commission vide its order dated 01.10.2012 disposed of the Case No. 86 of 2011 without considering the note of submissions of CCPPO. Being aggrieved by the order dated 01.10.2012 of the Commission, one CGP namely M/s. Nava Bharat Ventures Limited had filed an appeal before the APTEL under Section 111 of the Electricity Act, 2003 which was registered as Appeal No. 256 of 2012.
- (f) The APTEL vide its judgment dated 01.10.2014 disposed of the Appeal No. 256 of 2012. The relevant portions of the judgment of the Hon’ble APTEL are extracted hereunder:

“35. In view of above discussion, we set aside the impugned order dated 01.10.2012 passed by the State Commission. Accordingly, the Appellant is entitled to Delayed Payment Surcharge at the rate 1.25% per month on the unpaid amount as on 01.11.2011 against the energy bills upto the month of August 2011 from the date of presentation of bills raised at the tariff decided by the State Commission from time to time. In respect of the bills for September 2011 onwards, the Delayed Payment Surcharge at the rate of 1.25% per month would be applicable as per the order of the State Commission dated 27.06.2009, i.e. DPS to be charged from the date of presentation of bill if a bill has not been cleared within 30 days of presentation of the bill raised at the tariff decided by the State Commission from time to time. This judgment will also be applicable similarly placed CGPs/Co-generation Plants.

36. *Summary of our findings:*

- i) *The State Commission in the impugned order has exercised the Review jurisdiction considering the financial problem of GRIDCO. This cannot be a ground for review of the order as it would not fall within the ground on which Review can be allowed as per order 47, Rule 1 of CPC. Delayed Payment Surcharge is in the nature of interest and the same is entitled to be charged by the Captive Generating Plants/Co-generation Plants. Summary of our findings.*
- ii) *The State Commission also cannot exercise inherent power under Regulation 76(1) of the Conduct of Business Regulations 2004 in the present case to waive DPS and extend time for payment of outstanding dues without payment of DPS.*
- iii) *The State Commission under Section 61 of the Electricity Act in specifying the terms and conditions for determining the tariff has to safeguard the consumer's interest and at the same time ensure recovery of cost of electricity in reasonable manner and also follow commercial principles. The State Commission has to balance the interest of the consumers as also the commercial interest of the generators to ensure recovery of the prudent expenditure incurred by them. In the present case the State Commission has not balanced the interest of the consumers and the Captive Generating Plants. The State Commission has waived the DPS due to CGPs in contravention to its own order dated 27.06.2009 and without any jurisdiction causing prejudice to the CGPs by its action in denying the moneys due to them.*
- iv) *GRIDCO is not entitled to claim rebate if the payment is made after 30 days of presentation of bill. As per order dated 27.06.2009 passed by the State Commission in case no. 59 of 2009, GRIDCO is entitled to a rebate of 2% if the payment is made within four working days of raising bill and 1% rebate if payment is made within a period of 30 days from the date of presentation of bill. Therefore, GRIDCO cannot claim rebate if the payment against a bills is made beyond 30 days from the date of presentation of the bill.*
- v) *The Appellant is entitled to Delayed Payment Surcharge at the rate of 1.25% per month on the unpaid amount as on 01.11.2011 against the energy bills upto the month of August 2011 from the date of presentation of the bills raised at the tariff decided by the State Commission from time to time. In respect of the bills for September 2011 onwards, the Delayed Payment Surcharge at the rate of 1.25% per month would be applicable as per the order of the State Commission dated 27.06.2009, i.e. DPS to be charged if a bill has not been cleared within 30 days of presentation of the bill raised at the tariff decided by the State Commission from time to time from the date of presentation of the bill. This judgment will also be applicable to similarly placed CGPs/Cogeneration Plants.*

37. *In view of our above findings, the Appeal is allowed. The impugned order is set aside. GRIDCO is directed to make payment of arrears along with Delayed Payment Surcharge to the Appellant as per the directions given in this judgment within 30 days from the date of this judgment."*

- (g) Being aggrieved by the above judgment dated 01.10.2014 of the APTEL; GRIDCO has filed an appeal before Hon'ble Supreme Court of India in Civil Appeal No. 11194 of 2014. In the meantime, the Commission vide its order dated 12.05.2015 in Case No. 30 of 2013 had directed GRIDCO for final reconciliation of outstanding dues of CGPs by 02.07.2015. But GRIDCO did not reconcile and pay the outstanding dues of the applicant company within the stipulated period. Therefore, the applicant company had filed an application before this Commission under Section 142 of the Electricity Act, 2003 for non-compliance of Commission's order dated 12.01.2015 passed in Case No. 30 of 2013 and case was registered as Case No. 27 of 2015.
- (h) Hon'ble Supreme Court of India in their interim order dated 21.08.2015 in I.A. No. 02/2014 arising out of Civil Appeal No. 11194 of 2014 refused to grant stay on the impugned judgment of APTEL and further directed to pay the DPS to M/s. Nava Bharat Ventures Limited on furnishing a bank guarantee on equal amount. The said Civil Appeal No. 11194 of 2014 is pending for adjudication by the Hon'ble Supreme Court of India. The said interim order of the Hon'ble Supreme Court of India is reproduced below:

"Heard.

I.A. No. 02/2014 is filed aggrieved by that portion of the direction in the impugned order by which the Tribunal directed the Appellant herein to make payment of delayed payment surcharge to the Respondent herein within a period of 30 days. We do not see any reason to stay that order.

However, in the circumstances, we deem it appropriate to direct the Respondent to furnish bank guarantee for the amount to be paid by the Appellant herein pursuant to the directions in the impugned order. "

- (i) Pursuant to the above direction of the Hon'ble Supreme Court of India, GRIDCO has already paid the DPS to M/s. Nava Bharat Ventures Limited. The APTEL while disposing of the Appeal No. 256 of 2012 has directed GRIDCO to pay the DPS to the applicant company, being similarly placed CGPs who had supplied power to GRIDCO like M/s. Nava Bharat Ventures Limited and to implement the direction within a period of 30 days of the judgment. But while reconciling the outstanding dues of the applicant company, GRIDCO has not

taken into consideration of DPS. Further, the outstanding dues were also not settled as per the orders of the Commission.

(j) The petitioner vide its letter dated 08.05.2017 had intimated GRIDCO the followings:

- As per the reconciliation statement, GRIDCO has calculated payable amount to JSL at Rs.5,30,92,076/- against the supply of surplus power during the period 17th February 2014 to June, 2015.
- GRIDCO has not considered payment for total energy supplied including inadvertent power for the month of April, 2014, May, 2014 and June, 2014.
- The reconciliation statement is limited up to 30th June 2015 and any payment from July 2015 onwards has not been considered.
- Open Access Under Injection Charges has deducted from the dues of the petitioner considering DSM.
- GRIDCO has considered high frequency injection ≥ 50.05 Hz.
- The above points are not as per relevant orders of the Commission.
- However, the petitioner accepted the reconciliation amount made by GRIDCO and requested GRIDCO to release the same and review the above deviations in the light of the relevant orders of the Commission for completion of reconciliation process.”

(k) The Commission in its order dated 27.06.2009 in Case No. 59 of 2009 had directed GRIDCO to pay the DPS @1.25% if the bill was not settled within a period of 30 days of presentation. Since, the bills of the petitioner was not settled by GRIDCO within the stipulated period, the petitioner is entitled to get the DPS. Further, while disposing the Case Nos. 26 & 27 of 2015, the Commission had directed that the power purchase dues are to be settled through reconciliation immediately. The DPS, if any, may be calculated in a separate statement as per the order of the APTEL subject to final decision of the Hon’ble Supreme Court of India. But GRIDCO has neither settled the power purchase

dues of the applicant nor has calculated or maintain a separate statement in respect of DPS as per order of the APTEL.

- (l) GRIDCO has withheld an amount of Rs.44.17 Crore from the monthly energy bills from the month of December, 2009 to March, 2017. Further the applicant is also entitled a sum of Rs.89.30 Crore from GRIDCO as DPS for non-payment of monthly energy bill for the period from FY 2009-10 to 2019-20.
- (m) The present case relates to the adjudication of the dispute between GRIDCO, the bulk supply licensee and the appellant, a generating company. Hence, this Commission has the jurisdiction to decide the present case under Section 86 (1) (f) of the Electricity Act, 2003. The petitioner prays the Commission for a direction to the GRIDCO to pay a sum of Rs.44.17 Crore as the arrear amount and Rs.89.30 Crore as DPS (till 3rd quarter of FY 2019-20), as per the orders/judgment of this Commission and APTEL.
- (n) It is disputed and denied that the petitioner had accepted the reconciliation statement. At the bottom of the reconciliation statement, it is noted that the balance amount payable as per the reconciliation statement is full and final and not to bear any DPS, which is contrary to the order/judgment of the Commission as well as the APTEL. GRIDCO has taken the plea that the amount settled after reconciliation is not sustainable both in facts and law. It is the duty of GRIDCO to clear the dues within a period of 30 days from the presentation of the bill, otherwise it is liable to pay the DPS.

3. The respondent-GRIDCO has submitted the followings:

- (a) The petitioner has not disclosed the payment already made by GRIDCO in accordance with the Para-16 (iii) of the Commission's order dated 28.02.2009 passed in Case No. 6/2009 to Case No. 20/2009.
- (b) In view of good hydro condition and availability of cheaper power through UI mechanism, GRIDCO/SLDC had directed all CGPs to back down their injection/export to GRIDCO limited to 50 MW w.e.f. 19.09.2010. Since the power injected by the petitioner is more than 50 MW on an average in a day, the

same was considered as inadvertent power and paid at the pooled cost of the State hydel power for FY 2010-11.

- (c) As per the orders of the Commission in different cases, GRIDCO had reconciled the energy bills and sent the same to the petitioner. But no response was received from them. The final reconciliation of energy bills of the petitioner was made by GRIDCO for the period from March, 2009 to July, 2012 as per the orders of the Commission dated 01.10.2012 and 16.11.2012 in Case Nos. 86 of 2011 and 106 of 2011 respectively and the reconciliation statement was sent to petitioner on 04.04.2013. Being aggrieved with this reconciliation statement the petitioner had requested GRIDCO for a joint discussion to resolve the issues arising out of the interpretation/implication of the orders of the Commission.
- (d) GRIDCO has already filed an appeal before the Hon'ble Supreme Court of India in Civil Appeal No.11194 of 2014 against the order dated 01.10.2014 of the APTEL passed in Appeal No.256 of 2012. The interim order dated 21.08.2015 of the Hon'ble Apex Court has been complied by GRIDCO. But the said case is pertaining to the disputes between GRIDCO and M/s. Nava Bharat Ventures Limited and the petitioner is no way concerned with the said matter, nor any such dispute has been settled to be applied in all cases, in absence of any declaration made by the Hon'ble Apex Court.
- (e) As per Commission's order dated 12.03.2015 in Case No. 30 of 2013, GRIDCO on 17.08.2015 further invited the petitioner for reconciliation of energy and amount for the period from March, 2009 to March, 2014, requesting the petitioner to come and sign the reconciliation statement, failing which the same shall be treated as deemed acceptance. Since, no response has been received from the petitioner, GRIDCO treated the reconciliation as deemed acceptance by the petitioner.
- (f) However, as per the Commission's order dated 08.12.2015, GRIDCO had again requested the petitioner on 14.12.2015 for reconciliation of its energy bills and accordingly, a meeting was held on 15.12.2015 between GRIDCO & the

petitioner on the process of calculation for finalization of the reconciliation statement.

(g) Thereafter, the Commission vide its order dated 29.12.2015 in Case No. 26 of 2015 filed by M/s. SMC Power Generation Limited had clarified the following issues:

- Non-payment at firm power rate in case of injection of power between 100% to 105% of the implemented schedule.
- Non-payment at hydro pool cost against injection of inadvertent power.
- Wrong energy accounting procedure followed due to LoI issued by GRIDCO.
- Non-payment of Delayed Payment Surcharges (DPS).
- Non-payment of slab rates fixed by the Commission.

(h) Keeping in view, the above order of the Commission and implementation of Deviation Settlement Mechanism (DSM) w.e.f. 17.02.2014 by CERC, GRIDCO again invited the petitioner for reconciliation of its energy bills for the period from March, 2009 to 16th February, 2014. The petitioner then finalized the energy and amount for the period from March, 2009 to 16th February, 2014 and agreed with terms and conditions as per Commission's order from time to time and also the reconciliation statement was signed jointly by the petitioner and GRIDCO. In the said reconciliation statement it is noted that, *“(i) the reconciliation is made upto 16.02.2014 and the reconciliation of balance period will made after outcome of review petition being filed before Hon'ble OERC by GRIDCO, (ii) the balance amount payable as per this reconciliation is full and final and not to bear any DPS.”* The final reconciliation statement was sent to the Commission by GRIDCO vide letter No. 657 dated 25.01.2016. As per the above reconciliation statement, the final settled amount of Rs.17, 11, 62, 538/- has been paid to the petitioner.

(i) The Commission in its order dated 29.12.2015 in Case No. 26 of 2015 had fixed the operating frequency band of 49.50 Hz to 50.18 Hz for injection of scheduled power by CGPs. However from 17.02.2014, after implementation of DSM by

CERC, the frequency band was squeezed to 49.70 Hz to 50.05 Hz. In this regard, GRIDCO had filed a review petition before this Commission in Case No. 08 of 2016 which was dismissed by the Commission vide its order dated 19.07.2016. Then GRIDCO arranged a meeting with CCPPO on 09.09.2016 and CCPPO was agreed to the operating frequency band of 49.70 Hz to 50.05 Hz from 17.02.2014 for their monthly energy bill calculation, which was unanimously agreed.

- (j) Thereafter, basing on the Commission's order in Case No. 26 of 2015 and the aforesaid MoM with CCPPO dated 09.09.2016, GRIDCO sent a reconciliation statement to the petitioner on 10.11.2016 for finalization of energy bills for the period from 17.12.2014 to June, 2015, which was accepted by the petitioner and accordingly, GRIDCO has made payment to the petitioner on 07.09.2017 after adjustment of deviation charges towards open access.
- (k) GRIDCO had paid all outstanding principal amounts as per the orders of the Commission issued from time to time i.e. for the energy bills of the petitioner from March, 2009 to March, 2014 and July, 2014 to June, 2015, as per the jointly signed reconciliation statement made between the petitioner and GRIDCO. From April, 2014 to June, 2014 and July, 2015 onwards, GRIDCO neither has any contract/agreement with the petitioner to sell its surplus power to GRIDCO nor SLDC has scheduled power for sale by the petitioner to GRIDCO. Therefore, GRIDCO has stopped the payment towards energy bill raised by the petitioner towards there inadvertent injection to the State grid during those periods.
- (l) As per the judgment of the APTEL dated 08.05.2017 passed in Appeal No. 120 of 2016 & I.A No. 272 of 2016 in the case of M/s. Kamachi Sponge & Power Corporation Limited, Chennai Vrs. Tamilnadu Generation & Distribution Corporation Limited, it was held that without scheduling or contract any inadvertent power injected to the grid, does not carry any cost and the claim in this regard is not acceptable. In the meanwhile, the Commission has also following the said judgment of the APTEL, passed order dated 23.10.2019 in Case No. 38 of 2019 filed by CCPPO, alleging non-payment of bills of CGPs

including the petitioner towards there inadvertent injection to the State grid. In view of the above, the petitioner is not entitled for any payment against its bills raised and claim towards injection of inadvertent power to the State grid.

- (m) Before 17.02.2014 GRIDCO has deducted open access under injection charges from the bills of the petitioner as per the order of the Commission in Case No. 54 of 2012, considering the UI mechanism framed by CERC. Similarly, on implementation of DSM by CERC from 17.02.2014 instead of UI mechanism, GRIDCO has deducted under injection charges as per the DSM Regulations, which was mutually agreed between the petitioner and GRIDCO.
- (n) In view of the above facts and circumstances of the case, the petitioner is not entitled to any payment as claimed by it. Hence, the present application of the petitioner is totally devoid of any merit and liable to be dismissed.

- 4. Heard the parties through virtual mode. The Commission observed that final reconciliation of energy bills and amounts payable by GRIDCO towards drawal of CGP power from the petitioner has been made by GRIDCO for the period from March, 2009 to 16.02.2014 and has been jointly signed by both the petitioner and GRIDCO on 25.01.2016. Similarly, the reconciliation of the same for the period from 17.02.2014 to June, 2015 has been made by GRIDCO and signed by the representative of the petitioner on 11.05.2017 and sent to GRIDCO vide its letter No.6043 dated 25.05.2017 wherein the representative of GRIDCO have signed on 29th and 30th of May, 2017. Further, GRIDCO has submitted that they have already paid the outstanding dues of the petitioner as per the agreed reconciliation statement. However, based on the request of the petitioner, the Commission vide its interim order dated 30.11.2021 have directed both the parties to sit with Secretary, OERC to resolve the issues raised before the Commission in the present petition. The issues were as follows:

- a. Error in computation of energy injected during high frequency during the period from 01.03.2009 to 09.11.2010.*
- b. Differences in Computation of energy in respect of different slabs determined by the Commission in CGP pricing orders.*
- c. Non-payment of firm rate from 19th September, 2010 to 9th November, 2010*

d. Inadvertent injection of power to the Grid

e. Process of deviation charges

f. Delayed payment surcharges

5. Accordingly, a meeting was held on 14.12.2021 and after deliberation both the parties agreed to abide by the resolution taken in the said meeting. The Commission further observed that though representatives of both the parties agreed to the decisions taken in the meeting held on 14.12.2021 at OERC Office, later during the hearing, the petitioner – M/s. Jindal Stainless Ltd. disowned the resolution made in that meeting. Therefore, we have heard the above issues raised by the Petitioner though it is not fair and proper on the part of the petitioner to resile from the settlement and to raise the same contention again.

6. Accordingly, considering the case history and arguments of both the parties we direct as follows on the above issues:

(a) M/s. JSL shall provide required data to GRIDCO and GRIDCO for the relevant period shall verify the same with the data available with it and ERLDC. Accordingly, the error in computation of energy shall be rectified.

(b) The Commission in their order have fixed the price of the power on the basis of MU slab. Therefore, billing shall be made for the energy recorded in the meter on the price fixed for the MU slab.

(c) Considering availability of cheaper power from hydro sources GRIDCO had requested SLDC to restrict the schedule of M/s. JSL to 50 MW w.e.f. 19.09.2010. Accordingly, SLDC after intimating M/s. JSL restricted the schedule of its CGP power to 50 MW. Accordingly, GRIDCO has considered the payment upto 50 MW at firm rate and the excess energy above 50 MW has been considered for payment at the rate of average hydro pool cost of the respective financial year as per the order of the Commission.

Therefore, GRIDCO shall pay M/s. JSL at firm power rate for scheduled energy upto 50 MW only and excess power supplied to GRIDCO shall be treated as inadvertent power and shall be paid at hydro pool cost during that period.

- (d) The representative of M/s. JSL has stated that as per OERC order dated 23.04.2013 in Case No.54 of 2012, GRIDCO is required to pay for the inadvertent power injected to the state grid since JSL has a commercial agreement with GRIDCO for open access since 2011.

GRIDCO states that the present transaction is not governed under open access mechanism. The energy supplied by the CGPs shall be governed by OERC order dated 29.08.2011 in Case No. 22 of 2011 towards sale of surplus CGP power to GRIDCO. Accordingly GRIDCO has paid the same till agreement (LoI) with M/s. JSL for sale of surplus CGP power to GRIDCO was continued.

Further para 14 of the OERC order dated 23.10.2019 passed in Case No.38 of 2012 provides as follows:

“In view of the above, we observed that two basic ingredients that are necessary for payment 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 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. x x x x.”

Therefore, we find that inadvertent injection of power shall be dealt as per the aforesaid order of the Commission. No payment shall be made after LoI period is over.

- (e) We find that mechanism of under-injection charges implemented by GRIDCO for open access transaction has no application in CGP pricing. This charges for open access has been devised by GRIDCO for under injection in absence of intra-State DSM Regulation. This issue has no relationship with CGP power transaction between GRIDCO and M/s. JSL.
- (f) The representative of M/s. JSL stated that as per para 16 of OERC order dated 29.12.2015 in Case No. 26 of 2015, DPS needs to be calculated separately as per the order of APTEL. M/s. JSL suggested for calculation of DPS for the amount paid after due date as has been prescribed by the Commission. The representative of GRIDCO has stated that they have gone on appeal on the issue of payment of DPS to Hon’ble Supreme Court of India and the matter is sub-judice there. Therefore, the outcome of that case shall be binding on the parties.

The calculation of DPS is not desirable in view of the pendency of the matter before the Hon'ble Supreme Court of India. Mere calculation of DPS will not resolve the surviving issues of this proceeding.

In view of the above submission of GRIDCO, the parties should await the order of the Hon'ble Apex Court on payment of DPS issues in Civil Appeal No.11194 of 2014. The Petitioner is at liberty to raise the issue again after the disposal of above Civil Appeal by the Hon'ble Supreme Court of India.

7. The case is accordingly disposed of.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson