

**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. 53/2020

M/s. Shri Mahavir Ferro Alloys Pvt. Ltd.	Petitioner
- Vrs. -	
GRIDCO Ltd.	Respondent

Case No. 54/2020

M/s. Vivacity Renewable Energy Pvt. Ltd.	Petitioner
- Vrs. -	
GRIDCO Ltd.	Respondent

In the matter of: **An Application under S.142 of the Electricity Act, 2003 for non-compliance of order dated 05.02.2018 of the Commission passed in case No. 44 of 2016 and Case No. 45 of 2016 and the order dated 09.04.2019 passed in Case No. 28 of 2018 and Case No. 29 of 2018.**

For Petitioner: Shri. R. P .Mohapatra

For Respondent: Ms Sasmita Pattajoshi, AGM (PP) GRIDCO

ORDER

Date of hearing: 13.04.2021

Date of order: 22.06.2021

1. The present petitions one filed by M/s. Shri Mahavir Ferro Alloys Pvt. Ltd (Case No. 53/2020) and other filed by M/s. Vivacity Renewable Energy Pvt. Ltd. (Case No. 54/2020) are heard analogously since both the petitions are of similar nature.
2. Petitioners in their present petitions have stated that they had entered into a Power Purchase Agreement with GRIDCO Ltd., the Respondent, on 21.08.2010 to set up 1 MWp each Grid-Interactive Solar PV Power Generation Plant under RPSSGP Guideline under JNLLSM. Shri Mahavir Ferro Alloys Pvt. Ltd. had set up its plant at Village Tankajoda, Block: Bonai, Dist: Sundargarh and M/s Vivacity Renewable Energy Pvt. Ltd. had set up its plant at Village Benta, PO. Chandanpur, Dist: Nayagarh. The Generic tariff for 25 years for the Plant was fixed at Rs.18.52 per kWh, as per

Order of the Commission dated 09.07.2010. Both the plants were commissioned in March 2012.

3. Petitioners stated that the respondent GRIDCO did not follow the provisions in the PPA executed by the parties in relation to the following issues.

- i) Billing Procedure
- ii) Opening of Letter of Credit
- iii) Rebate and delayed payment surcharge on payment of bills
- iv) Deduction of tariff for lesser generation

4. Both the petitioners stated that earlier they had filed separate petition before the Commission on 29.08.2016 under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of the disputes, which were registered as Case No. 44 of 2016 and Case No. 45/2016 respectively. Both the cases were heard analogously and the Commission while disposing the said petitions in their order dated 05.02.2018 had directed as follows:

5. In para 14 of the said order the Commission observed the following :

"The billing procedure has been defined in clause 5(a) (i) of the PPA which shall be on the basis of joint meter reading promptly following the end of each month for the energy supplied and amount will be due on the 4th working day following the delivery of billing invoice by the Petitioner. GRIDCO's argument to treat the modified billing procedure basing upon Export statements of ABT compliant meters by EBC (Energy Billing Centre) installed later as "change in law" does not find strength due to presence of existing PPA which needs to be honoured. Therefore, the joint meter reading shall be taken by OPTCL/Discoms and the project proponent on the First day of every month at the delivery point as per Clause 8.1 (i) of the PPA. ,

In response to request of petitioner to open the LC, GRIDCO has stated that they have not opened LC except for M/s Vivacity Renewable Energy Ltd due to fund crunch. We observe that the PPA executed between parties herein have provision of LC in section 5(b) and the manner of operation of the same as well as subsequent paragraphs. Agreed provisions have to be honoured by the respondent. We find no reason to allow deviation to this. Therefore the respondent shall complete all formalities on LC in line with PPA within one month. On rebate and DPS, GRIDCO has stated that the practices adopted are followed uniformly for all the 8 solar generators as per PPA. We find no ambiguity in these issues for rebate and delayed payment to the project proponent.

Regarding deduction of Rs.0.61/ Kwh, for not maintaining 1 lakh units per month generation standard, GRIDCO stated that the same has been agreed in a meeting between the parties subsequent to the signing of PPA. The Petitioner stated that in that meeting it was decided that average annual generation would be 12 lakh units and not one lakh unit per month. The Commission observes that this modification is outside PPA and has not been approved (by Commission) yet. Therefore, in case it has been

agreed by parties, the same is to be included in PPA with appropriate amendment/ inclusion and placed before Commission for approval."

6. Further in para 15 of the said order the Commission directed the following :

"We direct that the provisions in the PPA in various issues that are binding in nature must be strictly followed by both parties."

7. Petitioners stated that the respondent, GRIDCO Ltd., did not implement the said Order dated 05.02.2018 of the Commission in Case Nos. 44 & 45 of 2016, in spite of the submissions of the Petitioner to take immediate action.

8. Petitioners stated that having no other option, they filed Petitions before the Commission on 09.05.2018 under Section 142 of the Electricity Act, 2003 to direct GRIDCO Ltd. to implement immediately the Order dated 05.02.2018 of Commission passed in Case Nos. 44 & 45 of 2016 relating to the following issues:

- (i) Billing on Joint Meter Reading
- (ii) Availing of rebate and DPS
- (iii) Opening of Letter of Credit and
- (iv) No deduction for lesser generation below 12 lakh units per year.

9. In the petition the petitioners submitted that a penalty of rupees one lakh be imposed on GRIDCO Ltd. for contravention of the directions issued by the Commission in its Order dated 05.02.2018 in Case Nos. 44 & 45 of 2016 with additional penalty of rupees six thousand for everyday during which the contravention continues.

10. The Commission admitted these petitions and registered the same as Case No. 28 of 2018 and Case No. 29 of 2018. The Commission after hearing the parties disposed the said cases in its order dated 09.04.2019. The Para 14, 15 and 16 of such Order are relevant which are reproduced below:

"14. As per law any power purchase by GRIDCO is to be preceded by approval of the Commission under Section 86 (1) (b) of Electricity Act, 2003. Thus the transactions till date, between parties has no sanctity of law. Therefore, as per our order dated 05.02.2018 the parties were advised to bring about changes in the PPA on this issue and place the same before the Commission for its approval. However, till date this has not materialised. In absence of a legally bound agreement unilateral deduction for lesser generation is not permissible. However, once the PPA is approved GRIDCO shall act upon the same. We direct parties to file the PPA before the Commission within three months for approval.

15. In the present cases, on the issue of billing on joint meter reading, the respondent GRIDCO has submitted that they will accept the monthly energy bills based on joint meter readings, if such bills are raised by the petitioners

with supporting documents. On the other hand, the petitioners have submitted that no arrangements was made for recording the joint meter readings, hence they are unable to raise bills based on the same. In view of the above, GRIDCO is directed to make necessary arrangements in consultation with OPTCL/DISCOMs and project proponent to take joint meter reading on the 1st day of the succeeding month and billing should be made by the petitioner in line with the provisions of the PPA.

16. *The Commission observed that in their order dated 05.02.2018 GRIDCO was directed to complete all formalities within one month for opening of LC in line with the provisions in the PPA. Therefore, it should not be an issue. If M/s. Mahavir Ferro Alloys Pvt. Ltd. desires they should intimate GRIOCO immediately and LC shall be opened within one month."*
11. Petitioners stated that while the Commission reiterated the Order dated 05.02.2018 in Case Nos. 44 & 45 of 2016 and directed GRIDCO Ltd. to implement the same within one month, no action has been taken by the Respondent. The Petitioner issued a series of reminders to the officials of the Respondent including the Chairman-cum-Managing Director, GRIDCO Ltd. dated 02.07.2019, 09.08.2019, 17.09.2019 and dated 06.12.2019 however, no reply was received from the Respondent to any of the above letters of the Petitioners.
12. Petitioners stated that on 22.01.2020, a mail was received from the DM (RE Cell), GRIDCO, that based on the reconciliation done by GRIDCO with IREDA for GBI claims, the monthly energy invoice be raised on the basis of initial-final data as reflected in the EBC energy export statement from next month onwards.
13. Petitioners stated that in a letter dated 31.01.2020 it intimated GRIDCO that since the energy bill for the month is to be raised on the basis of initial-final reading of the export meter, the joint meter reading taken on the 1st of the subsequent month, will form the basis for billing and the data in the monthly EBC Energy Export Statement loses its significance. In the said letter reference of the Commission's order as in Para 15 of the Order dated 09.04.2019 in Case No. 28 & 29 of 2018 was also given wherein GRIDCO was directed to "make necessary arrangement in consultation with OPTCL /DISCOMs and project proponent to take joint meter reading on the 1st date of the succeeding month and billing should be made by the petitioner in line with the provisions of the PPA".
14. Petitioners stated that GRIDCO Ltd, in its reply letter dated 28.02.2020 intimated the following:

- i) As per OERC Order dated 09.04.2019 in Case No. 28 & 29/2018, a meeting was convened with all the concerned where it was decided that adoption of JMR data in the billing software for the 8 nos. of SPV projects cannot be considered for billing and Energy Billing Centre will analyse whether replacement of JMR data with energy export statement data is possible in the billing software.
 - ii) During reconciliation of GBI, IREDA accepted for disbursement of GBI to GRIDCO under RPSSGP Scheme based on billing with initial-final data instead of load survey data of the EBC energy export statement.
 - iii) GRIDCO is unable to make any arrangement with the respective DISCOMs to take JMR for the above facts and can only entertain the monthly energy invoices on the basis of initial-final reading of EBC energy export statement.
15. Petitioners submitted that, the contents of the letter as above of GRIDCO, clearly establishes that no action was taken on the Orders of the Commission dated 05.02.2018 in Case Nos. 44 & 45 of 2016 and dated 09.04.2019 in Case Nos. 28 & 29 of 2018 relating to billing based on JMR on the 1st day of the month and this failure is continuing for more than 2 years.
16. Petitioners stated that the JMR can be taken by OPTCL or the DISCOM as per the Orders of the Commission. The intimation of GRIDCO that it is unable to make any arrangement with the respective DISCOMs to take JMR and can only entertain the monthly energy invoice on the basis of initial-final reading of EBC energy export statement, is only intended to delay the billing by the Petitioner and consequent delay in payment not only to the Petitioner but also to all the 8 SPVs under RPSSGP Scheme.
17. Petitioners stated that the GRIDCO Ltd, in an email dated 06.03.2020, intimated petitioner about a meeting to be convened on 13.03.2020 regarding the billing procedure of the 8 Nos. of 1 MW SPV Projects under RPSSGP Scheme as per the PPA executed on 21.08.2010 and discussion in the matter of gradual decrease in solar generation by the Power Plants.
18. Petitioners stated that in its letter dated 13.03.2020, it informed GRIDCO that the question of "billing procedure" has already been settled by the Commission vide Order dated 05.02.2018 in case No.44/2016 & 45/2016 and Order dated 09.04.2019 in Case No. 28/2018 and 29/2018. The relevant directions of the above Orders were also quoted. It was further submitted that "GRIDCO is liable for penalty under Section 142

of the Electricity Act, 2003 and no decision can be taken in the meeting convened on 13.03.2020 regarding billing procedure. GRIDCO has to implement the above Orders of the Commission relating to billing procedure".

19. Petitioners stated that it submitted to GRIDCO that the Solar PV Power Plants are incurring huge losses as the tariff determined by the Commission was based on a CUF of 18.5%, which is not achievable. It was further intimated that it does not agree to any reduction in tariff for lesser generation, as it has no control over the same and also considering that no such provision exists in the PPA dated 21.08.2010.
20. Petitioners stated that the representative of the Petitioner attended the meeting dated 13.03.2020 and submitted that the views of the Petitioner vide Letter dated 13.03.2020 to be incorporated in the Minutes of the Meeting (MoM). The petitioner is yet to receive the MoM so far.
21. Petitioners further submitted that the Energy Accounting is to be done only by SLDC, as per the Orders of the Commission, but GRIDCO is illegally maintaining the Energy Billing Centre (EBC) and issuing Energy Account statement to be followed by the solar PV' projects.
22. Petitioners stated that the Commission in its Order dated 05.02.2018 in Case Nos. 44/2016 and 45/2016 and Order dated 09.04.2019 in Case No. 28/2018 & 29/2018, has given directions regarding deduction of Rs. 0.61/Kwh for not maintaining 1 lakh units per month. The Commission had observed that in case it has been agreed by the parties, the same is to be included in PPA with appropriate amendment / inclusion and placed before Commission for approval.
23. Petitioners stated that no such amendment to the PPA has been agreed to and therefore it has neither been placed before nor approved by the Commission. In spite of such categorical orders of the Commission on 05.02.2018 & 09.04.2019, GRIDCO while making payment of the energy bill for the month of March, 2020, has made illegal deduction of RS.0.61/ Kwh for lesser generation during the FY 2019-20, in addition to rebate @2%.
24. Petitioners stated that in a letter dated 27.04.2020 it again brought to the notice of GRIDCO that the deduction towards lesser generation is not in accordance with the Orders of the Commission dated 05.02.2018 in Case Nos. 44/2016 and 45/2016 and dated 09.04.2019 in Case Nos. 28/2018 & 29/2019.

25. Petitioners stated that GRIDCO was also requested to immediately refund the amount deducted from the monthly energy bill for the month of March, 2020 and also to release the amount deducted, in the past towards alleged lesser generation. However, GRIDCO has neither refunded the amounts illegally deducted nor gave any reply to this letter.
26. Petitioners therefore stated that from the above submissions of the Petitioner it is clearly established that GRIDCO has not carried out any of the directions of the Commission, relating to the Order dated 05.02.2018 in Case Nos. 44/2016 & 45/2016 and Order dated 09.04.2019 in Case Nos. 28/2018 & 29/2018 relating to Billing Procedure, Opening of Letter of Credit and Deduction of tariff for lesser generation. On the other hand, illegal deduction towards lesser generation for the FY 2019-20 has been made in willful violation of the directions of the Commission. Therefore, GRIDCO shall pay, by way of penalty under Section 142 of the Electricity Act, 2003, the amount to be determined by the Commission for contravention of its' directions.
27. Petitioners in view of the above, made a prayer the Commission to pass orders on following issues:
- i) impose the maximum penalty of one lakh rupees on GRIDCO Ltd and additional penalty of six thousand rupees for every day from 05.03.2018, for continuing failure, under Section 142 of the Electricity Act, 2003.
 - ii) direct GRIDCO to refund to the Petitioner, along with interest, all the amounts illegally deducted towards lesser generation.
 - iii) to implement the billing procedure based on JMR on the 1st day of the subsequent month.
 - iv) direct GRIDCO to open the Letter of Credit in favour of the Petitioner immediately.

GRIDCO'S submissions

28. GRIDCO replied that the efficiency of the 1 MW Solar PV projects located respectively at Tankajoda, Bonai, Sundergarh and village Benta, Chandpur, Nayagarh district are not satisfactory since their CoD on 15.03.2012 and 16.03.2012 and have operated at CUF lower than 15% always since March 2012 due to lack of proper maintenance of the solar project to maintain the generation at the desired CUF of 18.5% specified by OERC for RPSSGP scheme.

29. GRIDCO is not getting the desired quantum of solar generation from the 1 MW Solar PV project of the petitioners as per the PPA dated 21.08.2010 which is also a reason for contributing towards non-fulfillment of solar RPO of GRIDCO.
30. Under the billing methodology, to carry out the billing for the energy exported from the 1 MW Solar PV project of the petitioner on the basis of the JMR data as per the PPA, deliberation was made with SLDC, Energy Billing Centre and concerned DISCOMS and it was opined that it will be difficult to account energy as JMR data cannot be processed through the billing software as done for all other Generators.
31. As agreed with IREDA on disbursement of Generation Based Incentive (GBI) under this RPSSGP Scheme, billing is being done for the 8 nos. of SPV projects on initial-final Meter reading data of the EBC Energy Export Statement (instead of load survey data).
32. The other 6 nos. of 1 MW solar developers under RPSSGP Scheme excluding M/s. Shree Mahavir Ferro Alloys Pvt. Ltd. and M/s. Vivacity Renewable Energy Pvt. Ltd. have agreed for billing on the basis of the initial-final Meter reading data of the EBC Energy Export Statement.
33. As regards the opening of Letter of Credit (LC) in favour of the petitioner, it is in place with Union Bank of India for an amount of Rs.19.40 lakhs. However, no such request has been received from the developer on opening or renew of LC. On receipt of the proposal, necessary action will be taken on the LC.
34. GRIDCO is paying to the Petitioner bills within the due date as per the PPA terms & conditions to avail rebate and to claim GBI from IREDA, the petitioner has not got any scope to operate the LC in the past.
35. As directed by the Commission vide Order dated 05.02.2018 in Case No.44 & 45 of 2016, GRIDCO has proposed all the 8 nos. of 1 MW Solar developers under RPSSGP scheme for amendment of the existing PPA\ dated 21.08.2010 for insertion of the penalty clause in line with the Record Notes of Discussion dated 17.07.2012, which was later superseded by Record Notes of Discussion dated 05.04.2013.
36. All of the agreements executed by GRIDCO for procurement of solar power have the clause for penal provisions for shortfall in generation than the allowable limit except in RPSSGP scheme. All the 1 MW solar PV projects under RPSSGP scheme got

commissioned in FY 2011-12 and as agreed between the parties, penalty of Rs.0.61/kWh was applicable for lesser generation than 12 Lakh Units since 2013.

37. The matter of the Penal Provision under RPSSGP scheme in line with the PPA/ PSA executed with PTC / SECI with necessary Amendment in the existing PPA will be dealt through a separate petition before the Commission.
38. In case of the petitioners, no such amount is pending at present for refund to the petitioner for FY 2019 -20 which violates the direction of Commission in Order dated 05.02.2018 in Case No. 44/2016.
39. No action of GRIDCO as cited by the Petitioner is the willful violation of the directions of Commission in the Order dated 05.02.2018 in Case No. 44 & 45 of 2016. Hence the petition filed by M/s Shri Mahavir Ferro Alloys Pvt. Ltd. and M/s. Vivacity Renewable Energy Pvt. Ltd. under Section 142 of the Electricity Act, 2003 may be rejected.
40. GRIDCO is conscious of the situation to treat all the 8 nos. of Solar developers under RPSSGP scheme in equal footing and giving its all-out effort to harness more power from Renewable Energy Sources towards fulfilling the specified RPO.

Rejoinder of the petitioner to the reply of the respondent GRIDCO

41. The Orders of the Commission dated 05.02.2018 in Case Nos. 44 & 45 of 2016 and dated 09.04.2019 in Case Nos. 28 & 29 of 2018 have not been carried out by the Respondent, even though more than three years have elapsed. However due to non-implementation of the above Order the Petitioner had no other option but to file other petitions before the Commission which were registered as Case Nos. 28 & 29 of 2018.
42. It is denied that due to lack of proper maintenance the CUF of the 1 MW Solar PV Project located at Tankajoda, Bonai, Dt. Sundargarh and Benta, Nayagarh district is lower than 15% against CUF of 18.5% specified by the Commission for RPSSGP Scheme.
43. As admitted by the Respondent, none of the 8 nos. 1 MW Solar PV Projects under the RPSSGP Scheme has achieved a CUF of 18.5%, from the date of COD in 2012. Further, when the CUF was less than 15% from the beginning namely the COD in 2012, it cannot be on account of lack of proper maintenance but due to natural conditions like solar insolation and the climatic changes. On the other hand the Project

Developers are incurring huge losses, due to the actual solar insulation being much less than 18.5%, based on which the tariff was determined.

44. The submission that one of the reasons for GRIDCO not fulfilling its solar RPO due to not getting the desired quantum of solar generation from the 1 MW Solar PV Projects is totally untenable and ludicrous. The anticipated generation from the 8 nos. 1 MW Solar PV Projects, even with CUF of 18.5%, is a very small quantity compared to the solar RPO of GRIDCO.
45. Respondent submitted that except Shri Mahavir Ferro Alloys Pvt. Ltd. and Vivacity Renewable Energy Pvt. Ltd. all other 6 nos. of 1 MW Solar developers under RPSSGP Scheme have agreed for billing on the basis of the initial-final Meter reading data of the EBC Energy Export Statement and copies of these Minutes of Meeting have been submitted. However, there was no intimation to the petitioners about any proposed meeting. Further these MoMs do not have any heading regarding the date of the meeting, neither the signatures of the representatives of GRIDCO and the Solar developers nor carry any dates, which is perhaps intended to mislead.
46. GRIDCO has not filed any review petition before the Commission for amendment of the order in Para 15 of the Order dated 09.04.2019 in Case Nos. 28 & 29 of 2018 and it is making submissions only on 22.01.2021 after the Petitioner had filed the case registered as Case Nos. 53 & 54 of 2020. Therefore, it is a clear case of willful contravention of the Orders of the Commission dated 05.02.2018 in Case Nos. 44 & 45 of 2016 and Order dated 09.04.2019 in Case Nos. 28 & 29 of 2018 for which the Respondent is liable to be penalized under Section 142 of the Electricity Act, 2003.
47. Clause 5(b) (vii) of the PPA is reproduced below for the reference.

"5(b) Payment Procedure

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(vii) Letter of Credit (LC) on or before 30 days prior to the scheduled COD of the Project, and at all times thereafter, GRIDCO shall cause to be in effect an irrevocable, divisible, revolving and confirmed L.C issued in favour of the Project Proponent by any nationalized Bank acceptable to the Project Proponent." (emphasis added).

Sub-clauses (a), (b), (c), (d) provide that the term of the PPA shall be of at least 1 year, payable on presentation by the project proponent immediately after 30 calendar days from the due date of claim, the LC Amount, renewal of LC by GRIDCO within 30 days

before expiry of any LC and recoupment by GRIDCO to the full amount of LC immediately on the event of a call on the LC.

48. In Para 7 of its counter the Respondent has submitted that "GRIDCO is paying the petitioner within due date as per the terms and conditions of PPA to avail rebate and to claim GBI from IREDA. The petitioner has got no scope to operate the L.C in the past." This submission of the Respondent is totally untenable as the PPA is valid up to 2037 and the Respondent has no authority to unilaterally change or not act upon any provision of the PPA.
49. It is, therefore, crystal clear that the action of the Respondent not to open the LC in spite of Orders of the Commission and four reminders by the Petitioner is a willful contravention of the Orders of the Commission. The Respondent is therefore liable to be penalized under Section 142 of the Electricity Act, 2003.
50. As regards the lower generation and the penalty the Petitioner submits that the Commission in Para 14 of its Order dated 09.04.2019 relating to deduction on account of lower generation, had directed the parties to file the PPA before the Commission within three months for approval. One year has elapsed since then but the Respondent has not yet filed any Revised PPA for approval.
51. The Respondent has made a wrong submission that no amount is pending at present for refund to the Petitioner for FY 2019-20. The facts and documents submitted clearly shows that against the energy bill for the month of March, 2020 an amount of Rs.6,27,847/- illegally deducted towards lesser generation during the FY 2019-20 and 2% rebate. However, no counter has been made against the submissions of the Petitioner. The Respondent has not submitted any revised PPA before the Commission. The Commission has held that deduction towards lesser generation without approval for the same in the revised PPA is not permissible. However, the Respondent is deducting the same and is not taking any action for refund, vide Para 17 of the petition in the present Case.
52. The submissions that no action of the Respondent is "the willful violation of the directions of Commission in the Order dated 05.02.2018 in Case No. 44/2016 is clearly untenable in view of the submissions made in the Petition and as well as the above rejoinder. The Respondent has in addition, also contravened the directions in Order of the Commission dated 09.04.2019 in Case No. 28/2018.

Commission's Order

53. The Commission heard the petitioner and the Respondent GRIDCO in these cases and has taken into record all the submissions in this regard. This case relates to the petition filed by the petitioners Shri Mahavir Ferro Alloys Pvt. Ltd. And M/s. Vivacity Renewable Energy Pvt. Ltd. Petitioners entered into a Power Purchase Agreement with GRIDCO Ltd., the Respondent herein, on 21.08.2010 to set up each 1 MWp Grid-Interactive Solar PV Power Generation Plant under RPSSGP Guideline under JNLLSM. Shri Mahavir Ferro Alloys Pvt. Ltd. has set up its plant at Village Tankajoda, Block: Bonai, Dist: Sundargarh whereas M/s. Vivacity Renewable Energy Pvt. Ltd. has set up its plant at Village Benta, PO. Chandanpur, Dist: Nayagarh. The Generic tariff for 25 years for the Plant was fixed at Rs.18.52 per kWh, as per Order the Commission dated 09.07.2010. Both the plants were commissioned in March 2012.
54. Petitioners in the present petition have alleged that the respondent GRIDCO has not followed the provisions of the PPA with respect to issues such as billing procedure, Opening of Letter of Credit, Rebate and delayed payment surcharge on payment of bills and deduction of tariff for lesser generation.
55. The petitioners first raised these issues in their petitions dated 29.08.2016 and the Commission addressed them in its order dated 05.02.2018 passed in Case No. 44 of 2016 and in Case No. 45 of 2016. In these orders the Commission as regards to billing procedure observed that the joint meter reading shall be taken by OPTCL/DISCOMs and the project proponent on the First day of every month at the delivery point as per Clause 8.1 (i) of the PPA. Similarly, with regard to opening of LC the Commission observed that the "agreed provisions in the PPA have to be honoured by the respondent. The Commission further observed that "we find no reason to allow deviation to this. Therefore the respondent shall complete all formalities on LC in line with PPA within one month." With respect to penalty of Rs.0.61/kWh for lesser generation than one lakh units per month the Commission had directed that in case both the parties agree to this Clause it should be incorporated in the PPA and thereafter the same should be placed before the Commission for approval. In summary the Commission has directed that the conditions of approved PPA should be scrupulously followed by both the parties.
56. When the directions as above given in the order dated 05.02.2018 were not implemented by the respondent GRIDCO, thereafter, the petitioners filed two other petitions which was registered as Case No. 28 of 2018 and Case No. 29 of 2018 in this

Commission. While disposing of those petitions the Commission in their order dated 09.04.2019 on the issue of billing on joint meter reading directed GRIDCO to make necessary arrangements in consultation with OPTCL/DISCOMs and project proponent to take joint meter reading on the 1st day of the succeeding month and billing should be made by the petitioner in line with the provisions of the PPA. With regard to penalty for lesser generation the Commission reiterated their earlier order and stated that this should be incorporated in the PPA and should be placed before the Commission for approval within three months. With regard to opening of LC the Commission observed that if the petitioners desire they should intimate GRIDCO immediately and LC shall be opened within one month.

57. The petitioners in the present petitions have again raised the same issues which were raised first time in the year 2016 and again in 2018. The Commission has also given various directions again and again to resolve these issues in their orders. The onus of implementing those orders mostly lie on GRIDCO. Let us examine our orders in this regard on 05.02.2018 and 09.04.2019. The summary is as follows:

- (a) GRIDCO is to make necessary arrangement in consultation with OPTCL / DISCOMs and project proponent to take joint meter reading on the 1st day of the succeeding month and billing should be made by the Petitioner in line with the provisions of the PPA.
- (b) GRIDCO is to complete all formalities within one month for opening of LC in line with the provisions of the PPA.
- (c) In absence of a legally bound agreement unilateral deduction for lesser generation is not permissible. However, once the PPA is approved GRIDCO shall act upon the same. GRIDCO is directed to file the PPA before the Commission within three months for approval.

58. On the first direction of the Commission, GRIDCO has not adhered to our order taking the plea that it will be difficult to account energy as Joint Meter Reading (JMR) data cannot be processed in the billing software which is done for all other generators. We want to point out para 15 of our order dated 09.04.2019 where the Commission had directed GRIDCO for Joint Meter Reading on their own submission that they would accept monthly energy bill based on the Joint Meter Reading. In spite of their submission during the proceeding, had they faced any difficulty for Joint Meter

Reading afterwards they could have come for review of our order. But they have not done that. Rather with scant regard to the order of the Commission they on their own have convened a meeting of parties and decided a different methodology of meter reading which is contrary to our order. This action of GRIDCO is a clear cut willful violation of our order.

59. On the second point of our order GRIDCO has contravened our direction regarding opening of LC. Though LC has been opened it should have been renewed before its expiry. From the submission of the Petitioner it is clear that the LC has not been renewed in time which amounts to non-existence of LC. Therefore, this is a violation of our order.
60. Lastly, the GRIDCO's unilateral action of deducting penalty for lesser generation without incorporating relevant provisions in the PPA with our approval is a gross violation of our order. The Commission has categorically in Para 14 of their order has directed that *"in absence of legally bound agreement unilateral deduction for lesser generation is not permissible. However, once the PPA is approved GRIDCO shall act upon the same. We direct parties to file the PPA before the Commission within three months for approval"*. Our order had been issued on 09.04.2019 which was more than two years ago. But GRIDCO has failed to take any action for approval of the revised PPA but rather has started unilateral deduction of penalty. This tantamounts to defiance of our order.
61. Unfortunately GRIDCO has not implemented a single component of our order. Neither they have gone on appeal nor have they filed any review petition on the same. Therefore, those orders have attained their finality. The Petitioners are running again and again to this Commission on the same issue.
62. The development of the renewable in the state is crucial to the overall fulfillment of objectives of the state renewable policy and Government of India targets on addition of renewable. The OERC Renewable Purchase Obligation (RPO) also has set targets for mandatory purchase of renewable as a percentage of the total power purchase from all sources. Government of Odisha is also encouraging set up of renewable projects in the state by creating land banks, rooftop solar installations on Government buildings and fast track clearances of the new projects. It is, therefore, of utmost importance that the renewable projects be encouraged to work in a conducive environment in the State. The role of GRIDCO is therefore vital since it is the sole procurer of electricity in Odisha

including from renewable sources. We believe GRIDCO has seriously misused its dominant position by flouting the provisions of the PPA in these two cases.

63. In view of these facts the Commission concludes that the GRIDCO is liable for punishment for non-compliance of the directions of the Commission in terms of the section 142 of the Electricity Act. The relevant provision of the Act is reproduced below:

Section 142. (Punishment for non-compliance of directions by Appropriate Commission): In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made there under, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

64. Now, the commission is satisfied that GRIDCO has contravened the directions issued by the Commission in this regard in our orders dated 09.04.2019 in Case No. 28 of 2018 and Case No. 29 of 2018 and responsible for setting those two orders at naught. However, as a last opportunity to GRIDCO we are directing that our orders in Case No. 28 & 29 of 2018 shall be complied within 15 days of issuance of this order in letter and spirit. If this is not adhered to, a penalty of Rs. 50,000 (rupees Fifty Thousand Only) each for contravention of the orders in Case No. 28 of 2018 dated 09.04.2019 and Case No. 29 of 2018 dated 09.04.2019 shall be paid by GRIDCO. The penalty shall be deposited in CM's Relief Fund and the receipt should be produced in this Commission. In case of continued failure by GRIDCO to implement our order after stipulated period an additional penalty of Rs.3000 (rupees Three Thousand Only) in each case will be imposed for every day during which the failure continues. The penalties imposed in this order shall not be accounted for in the ARR of the GRIDCO and must be recovered from the pay of the officer(s) responsible for such negligence.

65. The case is accordingly disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson