

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

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

Case No. 85/2020

M/s. Baitarani Power Project Limited	Petitioner
Vrs.		
GRIDCO Ltd. & Another	Respondents

In the matter of: **Application under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of the disputes regarding date of COD of 24 MW (3 x 8 MW) Small Hydro Electric Project (SHEP) of M/s. Baitarani Power Project Limited and deduction of 2% rebate by GRIDCO Ltd. in spite of delayed payment.**

For Petitioner: Shri Y. V Subbarao, Managing Director and Shri R. P. Mahapatra, the authorized representative of the petitioner.

For Respondents: Shri P. K. Dash, CGM (PP), GRIDCO Ltd. and the representative of CLD, SLDC.

ORDER

Date of hearing: 27.04.2021

Date of order: 03.11.2021

The petitioner –M/s. Baitarani Power Project Pvt. Ltd. (herein after referred to as BPPPL) has filed the present petition for adjudication of the disputes regarding date of COD of its 24 MW (3 x 8 MW) SHEP and deduction of 2% rebate by GRIDCO Ltd. in spite of delayed payment.

2. The petitioner has submitted that they have constructed a SHEP of capacity 24 MW (3 x 8 MW) on river Baitarani at Singhanali in Dist-Keonjhar, which was commissioned during August, 2020. Having followed the detailed procedure prescribed in Regulation 6.3A of CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 and after successful trial run of the Units-1 and 2 on 11.08.2020 and 10.08.2020 respectively, the relevant data was intimated to the State Load Despatch Centre (SLDC),

Bhubaneswar, who issued the Certificate of Completion of Trial Run operation of these two units vide its letter dated 19.08.2020. However, after completion of certain formalities required by the Electrical Inspectorate, Odisha, the petitioner declared the commencement of commercial operation (COD)/Commissioning of Units 1 & 2 on 14.08.2020 vide its letter dated 19.08.2020.

3. Similarly, after successful trial run of the Unit-3 on 24.08.2020, the relevant data was intimated to the SLDC, Bhubaneswar, who issued Certificate of completion of Trial Run operation of Unit-3 vide its letter dated 28.08.2020. The petitioner, vide its letter dated 28.08.2020, declared the COD of Unit No.3 and 24 MW generating station with effect from 0:00 hours of 25th August, 2020. GRIDCO vide its Letter dated 02.09.2020, stated that the petitioner has declared the COD on back date i.e. on the date of trial run and thus it cannot be accepted by GRIDCO. It was further stated that “SHEP developer may declare the COD as per the provisions stipulated in the CERC (IEGC) Regulation, 2010 (4th Amendment).
4. Thereafter, vide its letter dated 02.09.2020 the petitioner intimated SLDC and GRIDCO to furnish the energy account for the month of August, 2020 based on the provisions of Clause 5.3 of the PPA. GRIDCO vide its letter dated 16.09.2020, intimated that the revised COD dates for the 3 nos. of Units of 24 MW Lower Baitarani SHEP have not been received by GRIDCO yet. Necessary steps for issuance of Energy Export Statement can only be taken after confirmation of COD dates of the generating units.
5. The petitioner vide its letter dated 30.09.2020 submitted to GRIDCO the monthly bill for energy supplied during the month of August, 2020 and in response to the letter dated 02.09.2020 of GRIDCO stated that the Regulation 6.3A (2) and 6.3A (2) (xi) of CERC IEGC Regulation, 2010 (4th Amendment) states as follows:

“6.3A Commercial operation of Central generating stations and inter-State Generating Stations:

(2) Date of commercial operation (COD) in relation to a generating unit of hydro generating station including pumped storage hydro generating station shall mean the date declared by the generating company after demonstrating peaking capability corresponding to the installed capacity of the generating station through a successful trial run, and after getting clearance from the respective RLDC or SLDC, as the case

may be, and in relation to the generating station as a whole, the date of commercial operation of the last generating unit of the generating station.”

This regulation does not state that the date of COD shall be date of clearance from SLDC followed by submission of scheduling of power w.e.f. 00:00 hours after declaration of COD. The intention of the regulation is that the date of trial run is to be approved by SLDC. Once the trial run is declared as successful, the COD is to be declared by the developer from the date of successful trial run. Accordingly, BPPPL has declared the COD for Units 1 & 2 as from 00:00 hours of 15.08.2020 and for Unit 3 from 00:00 hours of 25.08.2020. Since the SHEPs are MUST RUN units, initially 15 minutes schedule was not given. However, 15 minutes schedule was given after receipt of intimation from SLDC.”

6. The petitioner has submitted that GRIDCO did not clear the monthly bill dated 30.09.2020 for energy supplied during the month of August, 2020 and insisted on declaration of COD of the units as stated in its letter dated 02.09.2020. GRIDCO also insisted the petitioner to submit a letter that 2% rebate can be availed even if payment is made beyond 2 working days. Therefore, the petitioner had no other option, as he is hard pressed for funds, but to again declare the COD of the units as follows under intimation to GRIDCO and SLDC vide its letter dated 21.10.2020.

Units-1 & 2 : COD from 00:00 hrs. of 20.08.2020

Unit-3 : COD from 00:00 hrs. of 29.08.2020

7. The petitioner vide its letter dated 06.10.2020, submitted the energy bill to GRIDCO for the month of September, 2020 amounting to Rs.7,55,04,625.00. The payment of this invoice was not made within 2 working days.
8. The petitioner has submitted that Para-7.3 of the PPA dated 18.12.2015 between GRIDCO and the petitioner relating to rebate and late payment surcharge reads as follows:

“In case payment is made through LC or by cash transfer within 2 (two) working days (except holidays under N.I. Act), a rebate of two percent (2%) shall be allowed. If payments are made beyond 2 working days by GRIDCO but within a period of one month from the date of presentation of bill, a rebate of one percent (1%) shall be allowed.”

However, in the instant case, GRIDCO made the payment on 23.10.2020 against the invoice for August, 2020 and part payment against the invoice for the month of

September, 2020 but availed the rebate of 2% on the basis of letter from the petitioner that rebate of 2% can be availed even if the payment is made fully or partly on 23.10.2020. Since part payment was made by GRIDCO the petitioner had again write to GRIDCO on 04.11.2020 that GRIDCO may avail 2% rebate on making payment of the balance amount by 04.11.2020.

9. The petitioner has submitted that the intention of the regulation is that the date of trial run is to be approved by SLDC. Once the trial run is declared as successful, the COD is to be declared by the developers from the date of successful trial run. Therefore, the Date of Commercial Operation declared by the petitioner earlier as given below is in accordance with the Regulations.

- COD of Units 1 & 2 was achieved on 14.08.2020 and scheduling is deemed to have commenced from 00:00 hrs. of 15.08.2020.
- COD of Unit 3 was achieved on 24.08.2020 and scheduling is deemed to have commenced from 00:00 hrs. of 25.08.2020.

10. The petitioner further submitted that due to the insistence of GRIDCO to alter the COD and to agree for a rebate of 2% even though payment was made after 2 working days, the petitioner had no other way than to write GRIDCO accordingly due to its financial crunch. The petitioner stated that on account of change in COD it has paid less by an amount of Rs.97,50,681/- and due to availing of 2% rebate by GRIDCO it has paid less by an amount of Rs.10,10,785/-. Hence the petitioner has been paid less by a total amount of Rs.1,07,61,466/- from its due.

11. In view of the above, the petitioner has prayed the Commission to:

- i. Approve the COD of Units-1 & 2 on 14.08.2020 and that of Unit-3 on 24.08.2020.
- ii. Allow a rebate of only 1% instead of 2% when the payment has been made after two working days.
- iii. Direct GRIDCO to pay the petitioner an amount of Rs. 1,07,61,466/- within a period of 7 days.

12. The respondent-GRIDCO has submitted that the petitioner M/s. BPPPL has executed a PPA with GRIDCO on 18.12.2015 to supply 24 MW power from its Lower Baitarani SHEP at Singhanali, Dist Keonjhar. The SLDC vide its letter dated 19.08.2020 has certified completion of Trial Run Operation of Units-1 & 2 of 24 MW Lower Baitarani SHEP of the petitioner and the petitioner vide its letter dated 19.08.2020 has declared the commercial operation date of Unit-1 & 2 as 14.08.2020 and cited that scheduling deemed to have started with effect from 15.08.2020 without submitting the day ahead schedules. Further, SLDC vide its letter dated 28.08.2020 has certified completion of Trial Run Operation of Unit-3 of the SHEP and the petitioner vide its letter dated 28.08.2020 has declared the commercial operation date of Unit-3 as 24.08.2020 and cited that scheduling deemed to have started with effect from 25.08.2020 without submitting the day ahead schedules.
13. GRIDCO has submitted that as per the provision of Indian Electricity Grid Code (IEGC) Regulation, 2010 of CERC (4th Amendment dated 06.04.2019) in Clause 6.3A (2), the SHEP developer is supposed to declare the commercial operation date of the units after successful Trial Run and getting clearance (Date of certificate of SLDC for needful trial run). Further as per Clause 6.3A (xi) of the said Regulation the scheduling of power station shall commence from 00:00 hours after declaration of COD. CERC in the Statement of Reasons (SOR) order dated 06.04.2016 for the 4th Amendment of Indian Electricity Grid Code (IEGC) Regulations, 2010 at Clause 7.2 under the heading ‘Start of COD’ has accepted the suggestion of POSOCO on declaration of COD which is reproduced below:
- “7.2 POSOCO has submitted that the scheduling should start from 0:00 Hr after declaration of COD which is accepted”.*
14. In view of the above, GRIDCO vide its letter dated 02.09.2020 has reminded M/s. BPPPL to declare the COD of the units as per the provision of CERC (IEGC) Regulations, 2010 (4th Amendment). The petitioner vide its letter dated 30.09.2020 submitted a reply to GRIDCO citing that the schedules are not submitted due to the MUST RUN status of the SHEP Units. GRIDCO stated that the reply may not be acceptable on the ground that if it happens, all renewable energy power systems shall be treated as ‘Must Run’ power plants and shall not be subject to Merit Order Rating

(MOR)/Merit Order Dispatch (MOD) principles. Hence, MUST RUN status does not take away the obligation of submitting the day ahead schedules. Thereafter the petitioner vide its letter dated 21.10.2020 has revised the COD of Units-1 & 2 to 20.08.2020 & Unit-3 to 29.08.2020 and the dispute on COD was settled as per the above mentioned letters. Now again raising the said dispute before the Commission is not acceptable in the eye of Law.

15. GRIDCO has further submitted that as per the provision of the PPA 2% rebate is allowed for the payment made within two working days and 1% rebate allowed for payment beyond two working days but within 1 month from the date of presentation of bill. For the payments made beyond one month upto 60 days of presentation of bill no rebate is applicable. For payment beyond 60 days of presentation of bills, a surcharge of 1.25% is applicable. The petitioner vide its letters dated 13.10.2020, 16.10.2020 and 22.10.2020 has approached GRIDCO to make the payments towards energy supplied during August, 2020 and September, 2020 availing 2% rebate citing it has acute financial crunch. Considering the above letters of the petitioner, a part payment of Rs.4,50,69,332/- was made by GRIDCO on 23.10.2020 availing 2% rebate within two days from revision of COD by the petitioner. Again, the petitioner vide its letter dated 04.11.2020 requested GRIDCO to release the balance amount availing 2% rebate and accordingly the balance amount was released by GRIDCO on 04.11.2020 availing 2% rebate.
16. GRIDCO has submitted that GRIDCO has entered into the PPA with the petitioner under unavoidable and compulsive circumstances of the plant commissioning in time i.e. 36 months from the date of signing PPA, to help GRIDCO to meet the RPO. In context of that time the RE tariff rate worked out was comparable. But for whatsoever reason (not assignable to GRIDCO) the project could not come in time and by the time it came the context and scenario has changed. In the present context of RE tariff rate of the petitioner's plant works out to be very high and prohibitive for its purchase. GRIDCO stated that its present financial condition is also very much deplorable, but just to honor the commitment of PPA, GRIDCO has settled and paid the dues of the petitioner availing rebate based on his written declaration of COD. The petitioner is now disputing its commitment on the ground of compulsion. GRIDCO would like to dispute the PPA under the compelling circumstances and would like to free itself from purchase obligation if allowed and make way for the petitioner to sell power to any fit buyer. In view of the

above, raising such disputes before the Commission by the petitioner is not acceptable and the petition may be stopped as per the law of estoppel and the case may be dismissed in the interest of justice.

17. The respondent-SLDC has submitted that the petitioner has conducted the trial run of its Unit-I from 05:00 Hrs to 17:00 Hrs of date 11.08.2020 and Unit-2 from 17:00 Hrs of date 09.08.2020 to 05:00 Hrs of date 10.08.2020. The Special Energy Meter (SEM) data of the trial run of Units-1 & 2 of the petitioner was received by SLDC on dated 17.08.2020. After verification of SEM data, SLDC issued the Certificate of Completion of Trial Run Operation of Unit-1 & 2 of the petitioner on 19.08.2020 in accordance with the IEGC Regulations. Thereafter, on 20.08.2020, the petitioner submitted the day ahead generation schedule of Units-1 & 2 for date 21.08.2020 and SLDC prepared dispatch instruction accordingly.
18. Further, the petitioner conducted the trial run of its Unit-3 from 19:30 Hrs of date 23.08.2020 to 07:30 Hrs of date 24.08.2020. The SEM data of the trial run of Unit-3 was received by SLDC on dated 27.08.2020. After verification of SEM data, SLDC issued the certificate of completion of Trial Run Operation of Unit-3 of the SHEP on 28.08.2020. Thereafter, on 01.09.2020, the petitioner submitted the day ahead generation schedule of Units-1, 2 & 3 for date 02.09.2020 and accordingly SLDC prepared dispatch instruction of all the units of petitioner's SHEP.
19. Heard the parties. Their written notes of submission are also taken into record. The Commission observed that the petitioner M/s. BPPPL vide its Letter dated 19.08.2020, has declared the COD of Units-1 & 2 of its SHEP w.e.f. 14.08.2020 i.e. on the day of completion of successful Trial Run. Similarly for the generating Unit-3, the petitioner vide its Letter dated 28.08.2020 has declared the COD of Unit-3 of its SHEP w.e.f. 24.08.2020. Thereafter, on objection of GRIDCO for declaring the COD of the generating units without day ahead scheduling, the petitioner declared the revised COD of Units-1 & 2 w.e.f. 00:00 Hrs. of 20.08.2020 and that of Unit-3 w.e.f. 00:00 Hrs. of 29.08.2020 i.e. w.e.f. the dates of declaration with day ahead scheduling. However, in the present petition, the petitioner has prayed for approval of the COD of the generating units as declared by him earlier i.e. from the date of completion of the successful Trial Run.

20. The Commission observed that there is no provision relating to COD in the generic tariff order of OERC for Renewable Energy Sources. However, as per IEGC the COD in relation to the generating units of hydro generating station shall be declared by the generating company after demonstrating peaking capability corresponding to the instant capacity of the generating station through a successful Trial Run and after getting clearance from the respective RLDC or SLDC as the case may be. Further, the definition of COD as per OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 in Regulation 3 (o) (ii), the COD means *“In relation to a unit of hydro generating station including pumped storage hydro generating station, the date declared by the generating company from 00:00 hrs. of which, after notice to the beneficiaries scheduling process in accordance with the Odisha Grid Code is fully implemented, and in relation to the generating station as a whole, the date declared by the generating company after demonstrating peaking capability corresponding to installed capacity of the generating station through a successful trial Run, after notice to the beneficiaries”*.
21. From the above, it is clear that COD of a generating unit shall be declared after getting clearance from the Load Despatch Centre and after notice to the beneficiaries. Further, the generating station shall furnish the day ahead schedule w.e.f. the COD. In the instant case the petitioner M/s. BPPPL has declared the COD of its generating units with retrospective effect without giving day ahead schedule. However, the petitioner has later revised the COD of its generating units to the dates on which SLDC has certified the successful trial run of the generating unit and intimated to the sole beneficiary that is GRIDCO and also from those dates day ahead schedule has been furnished by the petitioner. Therefore, the Commission accepts the COD of the generating Units-1 & 2 of the SHEP of M/s. BPPPL as 00:00 Hrs. of 20.08.2020 and the COD for the Unit-3 as 00:00 Hrs. of 29.08.2020, which is also the COD of generating station as a whole.
22. The Commission further observed that the invoices for the month of August, 2020 and September, 2020 raised by the petitioner was not paid by GRIDCO raising the disputes that the invoices were raised based by the petitioner on the basis of earlier declaration of COD which was not accepted by GRIDCO and also the petitioner had not furnished day ahead schedule for certain periods. However, after revision of the COD by the petitioner

on 21.10.2020 GRIDCO has made part payment of the invoices on 23.10.2020 availing 2% rebate. Further, the balance payment of these invoices was made by GRIDCO on 04.11.2020 availing 2% rebate thereon. The Commission observed that the disputes on COD was resolved by revision of the COD on 21.10.2020 by the petitioner and GRIDCO has made part payment on 23.10.2020 which is within two days of revision of the bills. Therefore, availing 2% rebate on the partly paid amount is justifiable for which the petitioner has also given its written consent to GRIDCO. But the payment of balance amount of these invoices by GRIDCO on 04.11.2020 and availing 2% rebate thereon seems to be unjustified even though the petitioner has given its consent in writing.

23. In view of the above, the Commission directs GRIDCO to follow the provisions of PPA in respect of Rebate and DPS while making payment of the monthly invoices after resolution of the dispute on COD of the petitioner's SHEP.
24. With the above observations and directions, the case is disposed of.

Sd/-
(G.Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson