

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

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

Case No. 32/2021

M/s. S. N. Mohanty	Petitioner
Vrs.		
M/s. GRIDCO Ltd. & Another	Respondents

In the matter of: **An application under Section 86 (1) (f) of Electricity Act 2003, for adjudication for non-payment of the applicable dues against the monthly energy bills for supply of power from the 1 MW Solar PV project of M/s. S. N. Mohanty, the petitioner and making deductions, in violation to the provisions of Power Purchase Agreement dated 21.08.2010, no-opening of LC, withdrawal of Joint Meter Reading.**

For Petitioner: Shri Bibhu Charan Swain, authorized representative of M/s. S. N. Mohanty Firm.

For Respondent: Ms. Sasmita Patjoshi, AGM, GRIDCO and Shri Vidyadhar Wagle, TPCODL.

ORDER

Date of Hearing: 03.08.2021

Date of Order: 29.10.2021

The fact of the case is that the Petitioner M/s. S. N. Mohanty had entered into a Power Purchase Agreement (PPA) with M/s. GRIDCO Ltd on 21.08.2010 for giving solar energy generated from its 1 MW Grid-Interactive Solar PV Power Generation plant under RPSSGP Guideline under JNNSM at village Patapur, G. P. Kundei Padaa, Barang, Cuttack. The generic tariff for 25 years for solar power plant was decided at Rs.18.52 per kWh as per Commission's Order dated 09.07.2010 in Case No. 84/2010. The plant was commissioned on 23.08.2011 and has been operating successfully thereafter.

2. The Petitioner has submitted that GRIDCO is making considerable delay in releasing payment against the monthly invoices submitted by the Petitioner. GRIDCO is insisting to submit the monthly invoices based on the statement of the Energy Billing Centre (EBC) of GRIDCO, which is usually between 6th to 8th day of the subsequent month whereas Clause No. 5 (a)(i) of the PPA provides that:

“5(a)(i) The billing will be on monthly basis. GRIDCO will be billed by the Project Proponent based on joint meter reading promptly following the end of each month for the energy supplied and amount will be due on the fourth working day following the delivery of billing invoice.”

3. Further, the Petitioner has stated that TPCODL is not recoding the Joint Meter Reading (JMR) on the 1st day of the subsequent month for preparation of monthly energy invoice since October 2013. The Petitioner has elaborated that Clause No. 8.1 (i) of the PPA, provides as follows:

“8.1 (i) OPTCL/DISCOM and project proponent shall jointly read the metering system on the first (1st) day of every month at the delivery point.”

The interface point of 1 MW solar power plant of M/s. S. N. Mohanty is at HT level which comes under purview of DISCOM of local area i.e. TPCODL. Further as per the Vesting Order, TPCODL is supposed to discharge its function, duties, responsibilities as per Electricity Act 2003 and function as required to be carried out as envisaged in the earlier PPA signed by GRIDCO with M/s. S.N. Mohanty. Even OPTCL is also not a party to the PPA dated 21.08.2010 signed between GRIDCO and M/s. S. N. Mohanty, still OPTCL takes the dump reading from M/s. S.N. Mohanty. On 1st day of every month dump reading is taken by OPTCL at Chandaka grid, for all the interface meters including of M/s. S. N. Mohanty and OPTCL submits the same to GRIDCO, EBC and SLDC by webmail. GRIDCO, EBC and SLDC have metering software and they convert the dump metering to readable format utilising the said software. Thus, on 1st day of each month, GRIDCO has the meter reading of M/s. S. N. Mohanty.

Similarly, TPCODL collects the same copy of meter reading and converts it to readable format and also downloads the meter reading from OPTCL grid for raising the bill to HT/ EHT consumers. Thus, even if JMR is discontinued, then also both TPCODL and GRIDCO are having the meter reading by 1st or 2nd day of each month (based on holiday) and both are in a position to share the meter reading data to M/s. S. N. Mohanty for raising the energy bill to GRIDCO.

4. The Petitioner has further submitted that GRIDCO is unilaterally deducting 2% rebate even though payment is released after the due date of the payment which clearly violates the Clause No. 5(b)(ii) of the PPA as follows:

“5(b)(ii) A rebate of 2% on the billed amount shall be allowed for payment made by GRIDCO within 2 working days and 1% if the amount is paid within 30 days of the receipt of monthly bill of the Project Proponent.”

Further, no payment towards delayed payment surcharge is considered even if the payment is released beyond a period of 60 days from the date of billing which violates Clause No. 5(b)(iii) of the PPA which states as follows:

“5(b)(iii) For late payment beyond a period of 60 days from the date of billing, a surcharge at the rate of 1.25% per month or part thereof shall be levied on the billed amount by the Project Proponent.”

5. The Petitioner has further submitted that GRIDCO is deducting an amount of 61 Paise per kWh as penalty in case the annual generation falls below 1.2 MUs, even though there is neither such provision in the Orders of the Commission nor any clause in the PPA. The tariff of generation of power from Solar PV Plant has been determined by OERC assuming CUF of 18.50% with annual gross generation as 16.21 Lakh Units. However, neither in the PPA nor in the Order in the Case No. 84/2010, there is any provision that the tariff of Rs.18.52/ kWh is payable only when there is a guaranteed generation of 16.21 Lakh units per annum. The Commission has determined the tariff on the anticipated solar radiation of the area. The actual CUF may vary on account of deviation from the assumed solar radiation. Once, the generation is less than the assumed CUF of 18.5%, the Project Proponent itself loses a huge amount i.e. @ Rs.18.52/ kWh for less generation and as such not even able to get return on equity as allowed by the Commission. Penalty @ 61 Paisa/ kWh for the units generated in case of generation less than 1.2 MUs per annum by GRIDCO is a double penalty on the part of the Project Proponent.

6. The Petitioner has further submitted that GRIDCO has sent the petitioner a copy of record notes of discussion on the meeting held on 05.04.2013 at GRIDCO on availing the benefits of accelerated depreciation and other issues related to 8 numbers of Solar PV Plants commissioned under RPSSGP scheme. In the said letter it has been mentioned that:

“As per records notes of discussion of the meeting held with the Solar PV developers under RPSSGP Scheme dated 17.07.2012 it was decided to pay the applicable tariff lesser by 61 Paisa/ kWh if the monthly generation will be less than 1 Lakh Units. ... In view of the above it was decided to reduce the applicable tariff by 61 Paisa/ kWh if the annual average generation (Financial Year wise) will be less than 12 Lakh Units”.

The Petitioner has mentioned that copy of record notes have never been served to the solar developers and not even a single solar developer has agreed to the proposal of GRIDCO in the meeting. The Petitioner has written a letter dated 28.05.2013 intimating GRIDCO that they have never agreed to the proposal of GRIDCO. Therefore the

decision of GRIDCO for deducting 61 Paisa/ kWh for less generation is unilateral and illegal. Further, on 10.09.2020 GRIDCO had sent an e-mail to the Petitioner requesting to give consent for amendment of PPA executed between GRIDCO and the Solar Developer on 21.08.2010 basing on the records notes of discussion as per the direction of the Commission in its Order dated 09.04.2019 in Case No. 28/2018 and 29/2018. In reply to the e-mail of GRIDCO, the Petitioner has strongly denied to agree to the inclusion of penalty clause in PPA vide its letter dated 8.10.2020.

7. The Petitioner further submits that GRIDCO is yet to provide facilities of an irrevocable, revolving and confirmed letter of credit by any nationalized bank even though Clause No. 5(b)(v) of the PPA provides for the same.

“5 (b)(v) As a security package, GRIDCO shall provide facilities of an irrevocable, revolving and confirmed letter of credit by any designated nationalized bank. The L.C. will be immediately recoupable every month in case L.C. is operated. The amount of Letter of Credit shall be equal to the expected payment for one billing month.

5 (b)(vi) The Project Proponent shall not later than 60 days before the COD of the Power Plant inform GRIDCO of availability of electricity from the power plant. Within 30 days of intimation as aforesaid by the Project Proponent to GRIDCO, GRIDCO shall open a letter of credit for purchase of contracted net electrical energy from the project.”

8. The Petitioner has stated that earlier M/s. Mahabir Ferro Alloys Ltd. and M/s. Vivacity Renewable Energy Pvt. Ltd. have filed cases before OERC for similar discrepancies for violating the norms stipulated in the PPA in Case No. 44/2016 and 45/2016. The directions were not implemented and Commission again passed directions in Case no. 28/2018 and 29/2018. When the directions were again not implemented by GRIDCO, the Commission has passed stricture on GRIDCO and directed GRIDCO to comply to Commission's Orders within 15 days of issuance of orders in Case No. 53/2020 and 54/2020. The Petitioner has submitted that GRIDCO has not yet complied with those directions.

9. The Petitioner prayed the Commission that: a) the monthly energy bill to be submitted by the petitioner shall be based on the Joint Meter Reading taken by OPTCL/DISCOM which has been discontinued since October 2013 and TPCODL may be instructed accordingly to record JMR on the 1st day of the subsequent month for the purpose of billing by the Petitioner; b) the rebate to be availed by GRIDCO should be strictly in accordance with clause of the PPA; c) GRIDCO should pay late payment surcharge @1.25% per month in case the payment is made beyond 60 days; d) GRIDCO may be directed to open L.C. in any designated Nationalized Bank; e) GRIDCO may be directed

not to make any deduction for less generation as unilaterally decided by them; and f) GRIDCO may be directed to refund all the money deducted towards less generation, excess rebate taken along with payment of delayed payment surcharge.

10. The Respondent – GRIDCO has submitted that the Petitioner in writing has agreed to raise the energy bills on the basis of the EBC energy export statements as per initial – final readings instead of load survey data, which is also accepted by IREDA for releasing the GBI claims of GRIDCO and this will be included as an amendment to the existing PPA, with approval of the Commission. Regarding Rebate & DPS, GRIDCO has submitted that this has been deliberated and accepted by Commission vide order dated 05.02.2018 in Case No. 44/2016 and 45/2016 at para 14 which says:

“The billing procedure has been defined in the 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 fourth 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 latter, 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 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.”

The same practice is being followed for the petitioner under the RPSSGP scheme as per the PPA conditions. The payment conditions have also been approved by the Commission while approving the PPAs under RPSSGP scheme in Case No.84 /2011.

11. GRIDCO has further submitted that the payment of DPS @1.25% per month is applicable for the payment made beyond a period of 60 days from the date of billing as

per Clause No.5 (b)(iii) of the PPA dated 21.08.2010. Sometimes, the developer desires to receive the payment with applicable rebate beyond the due date on personal undertaking. Further, GRIDCO has not received any invoice towards DPS from the petitioner for release of the payment beyond 60 days. In the reconciliation statement signed with the Petitioner upto 31.03.2019, the petitioner has not mentioned any point as being raised in the present petition, which is a complete afterthought.

12. GRIDCO has further submitted that the cost of Rs. 17 Crore per MW has been allowed by the Commission to the Petitioner under the RPSSGP scheme with a desired output of 1.621 MUs annually with the CUF of 18.5% to get the applicable tariff of Rs.18.52/ kWh. The petitioner has not been able to generate the desired quantum which is accountable towards the RPO of GRIDCO. Unlike all PPAs and PSAs, no penalty provision was included in the PPA executed under RPSSGP Scheme. GRIDCO in discussion and agreement with the Petitioner insisted for a minimum annual generation of 12 Lakh Units, failing which the applicable tariff payable to the Developers will be lesser by Rs.0.61/- per kWh (which will be equal to the CERC tariff of Rs.17.91/ kWh at which GBI is determined for GRIDCO) for the defaulting financial year which GRIDCO is bearing while getting Generation Based Incentive (GBI) from IREDA under the Scheme.
13. GRIDCO further submits that it has prayed before the Commission through a separate application seeking for the direction for necessary amendment of the PPA with regard to inclusion of the penalty provision. As agreed mutually with the Petitioner, for less generation than 12 Lakh Units in any Financial Year, the Petitioner is paid at the applicable tariff of Rs.17.91/- per kWh (Rs.0.61/- per kwh less) instead of the tariff of Rs.18.52/- per kWh for the defaulted financial year. Moreover, GRIDCO states that the Petitioner has provided the required information on opening of LC along with its consent to open an irrevocable, revolving and confirmed Letter of Credit as per PPA terms & conditions on August, 2020. GRIDCO has a limitation of amount for opening of Letter of Credit in favour of the Generators, still opening of LC in favour of the Petitioner has been taken up with banker, i.e. Union Bank of India. However, the petitioner is being paid promptly with 2% rebate usually.
14. The Respondent – TPCODL has submitted the PPA was signed between GRIDCO and the Petitioner and CESU/ TPCODL is not a party to this agreement. Hence, obligation under 8.1(i) of the PPA for JMR cannot be binding on TPCODL. With regard to the

reason for reading beyond 1st day of the next month, TPCODL submits that such energy generated by Petitioner's power plant is considered at one of the 166 input points to TPCODL in the GRIDCO bill. Further, the GRIDCO bill is required to be prepared after accounting for Open Access transactions which in turn requires 15 minute data to be made available from meters. This in turn requires the dump of data from various meters including from the meter of the Petitioner. It is only after the meter data from the above input points is collected, collated and verified, the bill of GRIDCO on TPCODL can be finalized. This process is a bit cumbersome and takes certain time. Therefore, the reading from the solar plant can be provided (by GRIDCO) to the Petitioner only after the data for energy bill on TPCODL is finalized by GRIDCO. The time period required for the above activities is thus inevitable.

15. TPCODL has further submitted that the Petitioner enjoys a tariff of Rs.18.52 per kWh which has been determined by the Commission. The Commission has made certain assumptions for determination of the above tariff, one of them is interest on working capital. While the order has not mentioned the number of months of receivables towards working capital, it is assumed that the norms as provided by CERC may have been used. CERC has considered two months of receivables in the Tariff Order for the FY 2010-11 dated 26th February 2010. Hence, it may have been appropriate to consider receivables of 2 months in the Tariff Order dated 9th July 2010 towards working capital. The tariff already considers that the payment to the power supplier will happen after 2 months. The PPA however provides a credit period of 30 days and so the developer has a cushion of 1 month. Hence, the petitioner cannot be aggrieved due the delay of 5-7 days in the meter reading.
16. Heard the Parties. In summary the Petitioner has prayed the Commission that: a) the monthly energy bill to be submitted by the petitioner shall be based on the Joint Meter Reading taken by OPTCL/DISCOM which has been discontinued since October 2013 and TPCODL may be instructed accordingly to record JMR on the 1st day of the subsequent month for the purpose of billing by the Petitioner; b) the rebate to be availed by GRIDCO should be strictly in accordance with clause of the PPA; c) GRIDCO should pay late payment surcharge @1.25% per month in case the payment is made beyond 60 days; d) GRIDCO may be directed to open L.C. in any designated Nationalized Bank; e) GRIDCO may be directed not to make any deduction for less generation as unilaterally decided by them; and f) GRIDCO may be directed to refund all the money deducted

towards less generation, excess rebate taken along with payment of delayed payment surcharge.

17. In this connection we are referring our order in Case No. 28 & 29/2018 dated 09.04.2019 which are similar in nature to the present case where we have directed as follows:

“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.”

18. Therefore, GRIDCO in the present case shall also 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 provisions of PPA.

19. In view of the prayer and submission of Petitioner on rebate and DPS, the Commission observed that GRIDCO has been deducting rebate of 2% even after delaying the payment beyond two working days from the receipt of monthly bill. GRIDCO is directed to adhere to the Rebate and DPS conditions as per Clause 5 (b)(ii) and Clause 5 (b)(iii) of the PPA respectively as mentioned at Para 4 of this order. Accordingly, the excess rebate amount deducted by GRIDCO shall be refunded by GRIDCO to the Petitioner.

20. In the connection of opening of LC we refer to Clause 5 (b) (v) & (vi) of PPA between GRIDCO and the Petitioner. We also reiterate our order in similar Case No. 44 & 45/2016 dated 05.02.2018 where we have directed as follows:

“14. xxxxxx 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. xxxxxx”

Therefore, all the formalities regarding opening of LC in favour of the Petitioner must be completed by GRIDCO within a month from issuance of this order. If LC has been opened in the meantime it must be renewed before its expiry.

21. Regarding unilateral deduction of Rs.0.61/kWh for lesser generation we refer to our order in Case No. 44 & 45/2016 where we have directed as follows:

“14. Xxxxxxx

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.

In addition to this the Commission in Case No. 53 & 54/2020 had issued stricture to GRIDCO for non-compliance of the above order of the Commission which is quoted below:

“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 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.”

In view of the above order of the Commission it is observed that unilateral deduction by GRIDCO for lesser generation is gross violation of PPA It is illegal and must be stopped immediately. As directed earlier, if the parties agree for a modification in the PPA, GRIDCO may come up with the modified PPA for approval of the Commission. Till such time the existing PPA must be honoured.

22. The case is accordingly disposed of.

**Sd/-
(G. Mohapatra)
Member**

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

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