

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

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

**Case No. 70/2021**

M/s. GRIDCO Ltd.	.....	Petitioner
Vrs.		
DoE, GoO & Others	.....	Respondents

**In the matter of:** An application by GRIDCO Limited under Section 86 of the Electricity Act, 2003 read with Section 21 of the Odisha Electricity Reform Act, 1995 and other enabling provisions for seeking approval of the Hon'ble Commission on the Power Sale Agreement (PSA) and the supplementary PSA executed between GRIDCO and Solar Energy Corporation of India Limited on dated 22.07.2021 for procurement of 500 MW Solar power under the Solar ISTS-connected linked with Manufacturing Scheme, Tranche- I towards fulfilling the Renewable Purchase Obligation of GRIDCO.

**For Petitioner:** Ms. Sasmita Pattajoshi, AGM, GRIDCO, Shri M.G. Ramachandran, Advocate and Shri Amar Patnaik, Hon'ble MP on behalf of SECI.

**For Respondent:** Shri V. Wagle, TPCODL, Shri K. C. Nanda, DGM (F), TPWODL, Shri Pratap Mohanty, TPNODL and Shri Binod Nayak, AGM (Comm.), TPSODL.

**ORDER**

**Date of Hearing: 21.09.2021**

**Date of Order: 18.10.2021**

The fact of the present case is that the Commission in its order dated 22.06.2021 in Case No. 20/2021 had directed GRIDCO to file final Power Sale Agreement (PSA) between it and SECI for procurement of 500 MW Solar power under manufacture linked ISTS connected solar scheme tranche-I towards fulfilling its Renewable Purchase Obligation (RPO). The Commission had further directed in the same order that the PSA should include observations of OERC on Basic Customs Duty (BCD) and waiver of inter-State transmission charges and losses.

2. Accordingly, GRIDCO has filed the present petition under Section 86 of the Electricity Act, 2003 read with Section 21 of the Odisha Electricity Reform Act, 1995 and other enabling provisions for seeking approval of the Commission on the PSA and the supplementary PSA executed between GRIDCO and SECI Ltd. on 22.07.2021 for procurement of 500 MW Solar power under Manufacture linked and ISTS-connected solar scheme Tranche- I towards fulfilling RPO of GRIDCO.
3. The Petitioner - GRIDCO has further submitted that vide its e-mail dated 23.06.2021, it had requested SECI to submit the copy of the PSA as per Order of OERC dated 22.06.2021 in Case No. 20/2021 for further necessary action. SECI as per the letter dated 25.06.2021 to GRIDCO has intimated that standard PSA has been prepared basing on the provisions of Standard Bidding Guidelines issued by MoP, GoI and Manufacture linked Solar Scheme guideline issued by MNRE which had already been submitted before this Commission. The PSA is a Pan-India document and it may not be possible to add any state specific clauses in the PSA which may lead to disparity among various buying utilities. Since the PSA under this scheme is finalized through tariff discovery process, changes in provisions of the PSA are not permissible. The waiver of ISTS charges and losses are governed under relevant Orders of MoP from time to time which does not require modification of standard PSA provisions. Solar power procurement is governed by MoP Order No. 23/12/2016-R&R dated 15.01.2021 where waiver of ISTS charges only has been considered by MoP and not waiver on ISTS losses.
4. The Petitioner has further stated that MNRE has only issued an Office Memorandum on 09.03.2021 indicating trajectory of BCD w.e.f 01.04.2022. MNRE in its Office Memorandum dated 20.07.2021 has clarified that solar projects where bids were submitted before 09.03.2021 and Letter of Awards have been issued by SECI, may be exempted from BCD, which is to be effective from 01.04.2022 on import of Solar PV cells & modules. The present procurement has been bid out before 09.03.2021 by SECI and hence, it may not attract imposition of BCD.
5. GRIDCO further submits that SECI has requested necessary approval from OERC towards addressing the issues related to waiver of ISTS-charges and losses and imposition of BCD without modifying the existing standard PSA. Accordingly, they have executed a

supplementary PSA to incorporate the above mentioned issues without modifying the standard PSA.

6. GRIDCO has further submitted that certain modifications were made to the standard PSA with reference to the Clause relating to Late Payment Surcharge which has been amended with reference to MoP Notification dated 22.02.2021 as per Electricity (Late Payment Surcharge) Rules, 2021. Again the Clause relating to Rebate has been amended as per Clause No. 58 (1) on 'Rebate' of CERC (Terms & Conditions of Tariff) Regulations, 2019 dated 07.03.2019. In addition to that in the present case the individual tariff for generators has been considered and pooled tariff Clause has been deleted.
7. GRIDCO submits that there is an inadvertent mistake in the order of the Commission in Case No. 20/2021 dated 22.06.2021 at paragraph 12 which reads as follows:  
  
*“this power will be delivered through SECI at the fixed tariff at Odisha Periphery without levy of any inter-state transmission charges and losses.”*  
  
The Commission has ordered thus due to erroneous submission of GRIDCO in its petition because waiver of transmission losses to GRIDCO is contrary to the notifications dated 15.01.2021 and 21.06.2021 of MoP, Government of India.
8. Accordingly, GRIDCO has prayed before the Commission to treat the present application of GRIDCO as Review Petition because of the apparent error of waiving transmission loss to GRIDCO at Para 12 in the said Order. GRIDCO has also prayed to approve the standard PSA as well as the supplementary PSA dated 22.07.2021 executed with SECI towards procurement of 500 MW Solar power under the ISTS connected solar linked with Manufacture Scheme Tranche- I in order to meet the Renewable Purchase Obligation of GRIDCO.
9. The Respondent – TPCODL has submitted that as clarified by the MoP in its Order dated 15.01.2021, in case projects get commissioned beyond 30.06.2023 then inter-State losses will be applicable. Further, if Transmission Losses are made applicable, it is due to the delay in commissioning of the project by the Developer. GRIDCO should not bear the same.

10. The Respondent – SECI submitted that the expression ‘and losses’ had been added in the Order in Case No. 20/2021 due to an inadvertent mistake in the pleading of GRIDCO. Orders of MoP dated 15.01.2021 and 21.06.2021 which were in existence at the time when the Order in Case No. 20/2021 dated 22.06.2021 was passed provide for waiver of only ISTS Transmission Charges and not losses. The Supplementary PSA has therefore been signed between GRIDCO and SECI providing for waiver of Transmission Charges only and not the “losses”.
11. With regard to the submission made by TPCODL, SECI has clarified that the cut-off date of 30.06.2023 for waiver of ISTS Transmission charges as per MoP Order dated 15.01.2021 was modified by their subsequent Order dated 21.06.2021. In the said order the cut-off date was extended to 30.06.2025 and it was clarified that waiver is allowed for inter-state transmission charges only and not for losses. SECI has further submitted that in any event, the commissioning date under the proposed PPAs will be well before 30.06.2025. Further, any implication of delay in commissioning of power plant by SPDs and the impact of liability to share the transmission losses will be as per the provisions contained in the RfS document and applicable regulations and Order of the Central Commission with regard to losses in the inter-state transmission system.
12. The Standard PSA was executed between SECI and GRIDCO on 22.07.2021 with the modification cited in above Paras. The important terms and conditions of the Standard PSA are as under:
  - (i) Terms of the PSA is for 25 years from Scheduled Commissioning Date (SCD) or from the date of full Commissioning, whichever is earlier;
  - (ii) The metering arrangements and Delivery Point shall be as per the provisions in the PPA.
  - (iii) The scheduling and energy accounting of solar power shall be as per the provisions of the PPA and Grid Code;
  - (iv) The Buying Entity (GRIDCO) shall pay the fixed tariff of Rs.2.54/kWh plus the trading margin of Rs.0.07/kWh, totalling Rs.2.61/- kWh for the entire Term of the Agreement;

- (v) Benefits on account of any reduction in tariff as per the provisions of SECI-SPD PPA, shall be passed on to the Buying Utility;
  - (vi) SECI shall issue to Buying Entity a signed Monthly Bill on the 1<sup>st</sup> Business Day of the month;
  - (vii) Payment due date shall be 30 days from the billing date. 2 % rebate shall be allowed for payment made within 5 days of the presentation of the bill through e-mail and 1% rebate for payment made beyond 5 days of the presentation of the bill upto the due date;
  - (viii) A Late Payment Surcharge of 1.25% per month is applicable beyond 30 days of due date;
  - (ix) If GRIDCO has any outstanding payment including Late Payment Surcharge against a bill after the expiry of 7 months from the 30 days beyond due date of the bill, it shall be debarred from procuring power from a power exchange or grant of short-term open access till such bill is paid;
  - (x) All payments by buying entity to SECI for power procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill;
  - (xi) Under payment Security Mechanism, GRIDCO has to provide irrevocable Letter of Credit, State government Guarantee and Payment Security Fund; and
  - (xii) If for any Contract Year subsequent to the commissioning of allocated project capacity, it is found that the SPD has not been able to generate minimum energy of 1033.22 MU till the end of 10 years from the SCD and 972.44 MU for the rest of the Term of the Agreement on account of reasons solely attributable to the SPD, a compensation shall be payable by the SPD to SECI which in turn shall remit the compensation amount to GRIDCO.
13. The Supplementary PSA has the following clauses addressing the issues related to waiver of ISTS-charges & losses and imposition of BCD:

*“AND WHEREAS SECI stated that, there will not be any revision in the final offered tariff i.e. INR 2.61/kWh on account of imposition of BCD. Further, no change in law on account of BCD will be claimed by either party, as per the MNRE OM No.283/3/2018 dt.09.03.2021. Regarding waiver of interstate transmission charges and losses, same are governed by relevant Ministry of Power (MoP) orders and as per the recent orders issued*

*by MoP, Government of India vide No.23/12/2016-R&R dt.15.01.2021 and No.23/12/2016-R&R-Part(1)[239444] dt.21.06.2021, the losses shall be borne by the buying entity, which shall be subject to approval of OERC.*

*1.0 Subject to the conditions as laid down by OERC order dt.22.06.2021 in Case No. 20 of 2021, the parties agree that all the terms and conditions contained in the PSA dt.22.07.2021 shall continue to be effective and enforceable as before.*

*2.0 The terms of this Supplementary Agreement shall be read as a part and parcel to the Power Sale Agreement dt.22.07.2021 entered into between the parties for all intent and purposes.”*

14. Heard the Parties. Earlier, the Commission in Case No. 20/2021 has made the following remarks:

*“12. The Commission further observed that solar RPO is likely to be increased in near future as per the guidelines issued by Govt. of India from time to time. Further, the subject 500 MW solar power is being available to GRIDCO from SECI at a cheaper price through Govt. of India scheme. Furthermore as submitted by GRIDCO this power will be delivered through SECI at the fixed tariff at Odisha periphery without levy of any inter-state transmission charges and losses. Since this 500 MW solar power will be commissioned before 31.03.2022, as clarified by SECI, the basic custom duty which is applicable from 01.04.2022 will not be applicable for procurement of such power by GRIDCO. In view of the above, the Commission accord in-principle approval for procurement of 500 MW Solar power by GRIDCO from SECI under the Solar ISTS connected linked with Manufacturing Scheme, Tranche-I towards fulfilling its Renewable Purchase Obligation provided that the applicable tariff should not go beyond Rs. 2.61/ kWh (including SECI margin of Rs. 0.07/ kWh) as proposed by GRIDCO in the present application. Further, GRIDCO is directed to file the final PSA incorporating the above observations of the Commission, duly signed by both GRIDCO Ltd. and SECI Ltd. for perusal of the Commission. The provisions relating to Basic Customs Duty and waiver of inter-state transmission charges and losses, as proposed by GRIDCO, should be incorporated in the PSA.”*

We find that GRIDCO has submitted the final PSA as well as a supplementary PSA by incorporating the above observations of the Commission which has been signed between GRIDCO and SECI on 22.07.2021. It is noted here that the issue of waiver of ISTS charges and imposition of BCD have been dealt in the supplementary PSA.

15. The Commission further observed that there has been certain modification to the standard PSA which has been previously approved. The Commission find that changes have been made in clauses relating to Late Payment Surcharge, Rebate and Applicable Tariff. GRIDCO has submitted that these amendments were made to the standard PSA with

reference to MoP Notification dated 22.02.2021 as per Electricity (Late Payment Surcharge) Rules, 2021 and as per Clause No. 58 (1) on 'Rebate' of CERC (Terms & Conditions of Tariff) Regulations, 2019 dated 07.03.2019. Further, individual tariff of the Generators is considered in the PSA instead of pooled tariff as per the directions of CERC which requires that individual power stations shall be tied up with target buyer. The Commission has observed that these changes have been made as per the notifications or directions of CERC and there has not been any change in the Applicable Tariff rate of Rs. 2.61/ kWh (including SECI margin of Rs. 0.07/ kWh) and other provisions of the PSA.

16. The Commission has also observed that GRIDCO has filed the present petition to review the Order of the Commission dated 22.06.2021 in Case No.20/2021 where a reference to waiver of transmission losses was made in Paragraph 12 of the Order which was contrary to the notification dated 15.01.2021 and 21.06.2021 of MoP. The Commission has observed that the order on waiver of transmission losses was made based on the submission of GRIDCO in the said Case No. 20/2021. GRIDCO in its recent submission has stated that this inadvertent mistake was made by GRIDCO in its Original Petition in Case No. 20/2021. Since there was an inadvertent mistake made by GRIDCO in its Original Petition, the Commission does not consider the application of GRIDCO as a Review Petition, but the application is considered as a Curative petition and the Commission accordingly clarifies that waiver of interstate transmission charges and losses are governed by relevant Orders of the Ministry of Power. As per recent orders issued by MoP, the ISTS losses shall be borne by the buying entity. This has also been clarified in the Supplementary PSA submitted by the Petitioner.
17. Accordingly, the statement *“Furthermore as submitted by GRIDCO this power will be delivered through SECI at the fixed tariff at Odisha periphery without levy of any inter-state transmission charges and losses.”* in the Order of Case No. 20/2021 is hereby modified as *“Furthermore as submitted by GRIDCO this power will be delivered through SECI at the fixed tariff at Odisha periphery without levy of any inter-state transmission charges.”*
18. With respect to the issue of BCD, the Commission observed that MNRE in its Office Memorandum dated 20.07.2021 has clarified that for solar projects where bids were

submitted before 09.03.2021 and Letter of Awards were issued by SECI, such bids are exempted from BCD on import of Solar PV cells and modules. Since in this Case the bid for procurement was out before 09.03.2021 by SECI, there shall be no imposition of BCD. This issue has also been dealt in the Supplementary PSA.

19. In view of the above, the Commission approves the aforesaid standard PSA and the Supplementary PSA dated 22.07.2021 executed between SECI and GRIDCO towards procurement of 500 MW Solar power under the Manufacture linked and ISTS-connected Solar Scheme Tranche- I for fulfillment of RPO of GRIDCO.
20. The case is accordingly disposed of.

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

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

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