

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

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

**Case No. 54/2022**

M/s. GRIDCO ..... Petitioner

Vrs.

TPCODL & Other ..... Respondents

**In the matter of:** **Application under Section 86(1) (b) & (k), S.94(1)(b) & (c), (2) of the Electricity Act, 2003 read with Regulations 9.3 & 9.4 of the OERC (Terms and Conditions for determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2014 and Order dated 24.03.2022 of the OERC passed in Case No. 107 of 2021 regarding approval of ARR & BSP of GRIDCO for FY 2022-23, to allow the additional power purchase cost to meet the State demand and recovery of the same from the DISCOMs of Odisha considering surplus revenue available with them during the first quarter of 2022-23.**

**For Petitioner:** Shri P.K. Das, CGM (PP), & Shri Lalit Mishra, DGM (Fin), GRIDCO Ltd.

**For Respondent:** Shri Puneet Munjal, Legal & RA, TPCODL, Shri K.C. Nanda, GM (RA & Strategy), TPWODL, Ms. Malacha Ghose, DGM(RA), TPNODL and Shri V. Wagle (Head Regulatory Affairs), TPSODL.

**ORDER**

**Date of Hearing: 20.12 .2022**

**Date of Order: 13.01.2023**

1. This application has been filed by the Petitioner - GRIDCO under Section 86(1) (b) & (k), S.94(1)(b) & (c), (2) of the Electricity Act, 2003 read with Regulations 9.3 & 9.4 of the OERC (Terms and Conditions for determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2014 and Order dated 24.03.2022 of the OERC passed in Case No. 107 of 2021 regarding approval of ARR & BSP of GRIDCO for FY 2022-23

to allow the additional power purchase cost incurred by it from additional sources to meet the State demand during the first quarter of 2022-23.

2. The Petitioner has made the following prayers :

- “i. To kindly take note of the steep increase in the power purchase costs of GRIDCO due to unprecedented demand growth over and above the approved sale to DISCOMs resulting in procurement of additional power at marginal cost from the exiting power purchase portfolio and at higher cost from power exchange due to unfavourable market conditions;
- ii. Allow the additional power purchase cost incurred by GRIDCO from the additional sources to meet the State demand;
- iii. Allow to recover from the DISCOMs, the increase in power purchase cost of Rs.283.87 Cr. through an interim Order considering surplus revenue available with DISCOMs during the 1<sup>st</sup> Qtrs of FY 2022-23.
- iv. X X X X X X X X X X
- v. Consider and approve a suitable mechanism for recovery of power purchase costs due to increases in demand by Discoms in future; and
- vi. To pass such Order(s), which may be necessary considering the above prayers and allow GRIDCO to amend/modify the application as necessary and make further submissions, if any.”

**Submissions of the Petitioner**

3. In support of its prayers, the Petitioner has mainly submitted as under :-

- (a) The Commission, vide its order dated 24.03.2022 in Case No. 107 of 2020-21, approved the ARR of GRIDCO wherein the expected revenue was allowed for Rs.9213.95 cr. and expenses of Rs.9235.11 cr., thereby leaving a revenue gap of Rs.21.16 cr. for FY 2022-23. The total quantum of power purchase approved was of 30474.23 MU at the rate of 297.69 p/u, thereby approving power purchase cost of Rs.9071.93 cr. The Commission approved the average Bulk Supply Price (BSP) of 312.34 p/u which was allowed to be recovered from DISCOMs for FY 2022-23.
- (b) In such approval of the Commission out of the total requirement of power purchase of 30474.23 MU, considered the quantum of sale to DISCOMs, sale of

emergency power to CGP and corresponding transmission loss at 3% of the total power purchase and hence the sale to DISCOMs was approved at 29,500 MUs.

- (c) In first quarter of 2022-23 the energy sale to DISCOMs increased substantially by around 1240 MUs. The increase in sale has been met by GRIDCO from additional power purchase of 1278 MUs during the first quarter commencing from April to June, 2022. GRIDCO met such additional power purchase from various generating stations in order to fulfill its obligation to supply power to DISCOMs.
- (d) That the cost of additional power purchase has increased due to increase in both quantum and per unit rate. GRIDCO has followed the merit order dispatch principle and procured power from costly thermal power plants, through power exchanges, over drawl from grid and through banking arrangements. This has resulted in significant increase in overall power purchase costs of GRIDCO during these three months.
- (e) The increase in power purchase cost may be attributed to the following reasons.
  - i. The Commission approved 29500 MU of energy sale to DISCOMs and due to steep increase in demand of about 17% in the first quarter the expected sale to DISCOMs for the year was anticipated to be 34,460 MU. This was due to unrealistic demand forecast of DISCOMs thereby compelling GRIDCO to procure power from other sources which are not in the merit order dispatch list or from market due to unprecedented shortage situation. This compelled in GRIDCO to pay higher cost for additional drawl at around Rs.5.20 p/u. The same power was sold to DISCOMs at the approved BSP of Rs.3.12 p/u. DISCOMs on the other hand fetched higher revenue for such additional energy sales.
  - ii. The average Market Clearing Price (MCP) in power exchanges was Rs.7.77 kWh for the month of April, May and June, 2022 which is much higher than the approved power purchase rate.
  - iii. Government of India vide its notification dated 18.5.2022 directed CERC to allow higher amount of blending up to 30% with imported coal to maintain resources adequacy and continuity of supply till 31.3.2023. Due to such

direction, the cost of the tide-up power from generators also contributed to the increase in power purchase cost due to rise in fuel cost.

- iv. Due to multiple outages at the approved generating stations such as OPGC stage-2 and NTPC, Darlipali-1, GRIDCO could not procure approved quantum of power from these stations during the first quarter.
- (f) GRIDCO had to procure power from Jindal India Thermal Power Ltd. (JITPL) though the Commission had not approved for scheduling of power for FY 2022-23. Petitioner has stated that the Hon'ble High Court in its order dated 29.04.2022 in the matter of WP (C) No. 18150 of 2018 & I.A. No.4241 of 2022 has directed JITPL for supplying power to GRIDCO at the rate of Rs.3.36 p/u. Accordingly, GRIDCO availed power of around 3.02 MU in April, 55.35 MU in May and 7.62 MU in June from JITPL. The petitioner accordingly submitted before the Commission to consider the power procured from JITPL as directed by Hon'ble High Court and approve the same.
- (g) The total power purchase cost during April-June, 2022 was Rs.664.42 cr. and deducting approved power purchase cost for additional 1278.33 MU of Rs.380.55 cr., the additional power purchase expenses incurred over the approved rate is Rs.283.87 cr. Petitioner stated it had to make arrangement for upfront payment to power generators against the additional power purchase. This amount shall remain unrecovered till the true up exercise is completed and till then has to bear the carrying cost without any additional revenue stream to fund the same. Government of Odisha has also expressed its inability to provide Government guarantee for FY 2022-23 in view of the fact that the Commission is not allowing the financing cost of past power purchase dues of erstwhile DISCOM in the ARR and there are not enough assets to ensure the repayment. The Government further stated that GRIDCO cannot buy power at higher cost and supply to DISCOMs at lower cost incurring losses.
- (h) GRIDCO is under financial stress due to non-recongnisation of legitimate cost towards power procurement and finance cost with non-realisation BSP dues from erstwhile DISCOMs. The petitioner cannot avail any further loan to fund such loss and apprehends that it shall not be able to continue uninterrupted power supply to the DISCOMs in absence immediate financial support.

- (i) On assessing the present trend on additional contract demand in all the categories of consumers in the first five months of year, the additional contract demand is expected to rise by 2000 MVA during the current FY 2022-23. The associated energy sale due to such rise in contract demand shall also contribute to increase in power purchase cost in future.
- (j) There has been considerable delay in the implementation of the Intra-State DSM Regulations and in the current situation the present arrangement has not been able to address this issue arising out of exceptional increase in power purchase cost.
- (k) It is stated that the margin out of the additional sale of power over and above the approved quantum is the surplus fund available with DISCOMs. The petitioner GRIDCO has estimated that the expected revenue surplus available with DISCOMs due to such additional sale is assessed to the tune of Rs.596.89 cr. The petitioner accordingly submitted before the Commission to issue suitable orders directing DISCOMs to make payment of additional power purchase cost impact of Rs.283.87 cr. to GRIDCO. This will enable GRIDCO to make timely payment to generators and maintain continuity of power supply to the consumers of the State. The petitioner also submitted to adopt a mechanism of automatic pass through of the additional power purchase cost to the DISCOM on quarterly basis in the new OERC (Terms Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations for the next control period.

**Reply of the Respondents**

- 4. The Respondent - TPWODL in his reply dated 01.10.2022 has mainly submitted as under :-
  - (a) The OERC (Terms & Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2014 provides for the truing up of actual expenses allowed subject to prudence check by the Commission. The Commission in its order dated 24.3.2022 in Case No. 107 of 2021 has held that any financial impact arising out of variations in the approved and actual energy purchase is to be taken care of in the truing up exercise of the applicant.
  - (b) The instant application filed by the applicant is not maintainable in the eyes of law since the instant application appears to be a review petition against BST order

for FY 2022-23 and the Commission in its order dated 24.3.2022 had approved the power purchase of the DISCOMS on an annual basis not in quarterly basis.

- (c) As per the regulations, any financial variation in the approved and actual energy purchase is to be taken care of in the truing up exercise. The computation of surplus revenue as derived by the petitioner alleged to be available with the DISCOMs during Q1 of FY 2022-23 is erroneous and tantamount to micro management of the utility.
- (d) The quarterly proportionate estimated energy availability comes to 9098 MU considering total energy availability of 36391.31 MU for FY 2022-23. The actual energy sale to DISCOMs during Q1 of FY 2022-23 is 8615 MU as compared to the availability of 9098 MU which is excess by 483 MU. The petitioner though estimating higher energy availability has preferred to buying additional power of 1278 MU at higher cost which in turn will increase burden on the consumers.
- (e) The applicant has listed out the major reasons for increasing power purchase cost such as unrealistic demand projections, increase in market price of power exchanges, higher amount of blending of imported coal, multiple outages of approved GENCO and procurement of power from Ms. JITPL. However, as contended by the petitioner regarding unrealistic demand projections by DISCOMs, it was observed that as a result of coal shortage scenario in the entire country in the Q3 and Q4 of FY 2021-22 till Q1 of 2022-23, certain industrial consumers instead of procuring power from their own CPP started drawing power from DISCOMs to the extent of demand maintained due to substantial increase in coal costs. However the drawl by the industries was well within their CD as well as permitted assembly.
- (f) As regards the contention of the applicant relating to financial stress, it may be considered that the DISCOMs in complying with term of vesting order have collected substantial amount of arrears from the consumers prior to March, 2020. TPWODL has remitted Rs.209 cr. till September, 2022 after deducting the entitled incentive and GST. There is also no default in payment of BST bills.
- (g) TPWODL has given a list of industrial consumers in the petition and has shown that none of the industry have availed extra load during Q1 other than Railways.

Therefore, the contention of the petitioner regarding upcoming load in the near future is conditional and not yet confirmed.

- (h) As regards the billing of the over drawl of energy by DISCOMs from GRIDCO and the applicable BSP rate, the TPWODL stated that it is paying highest rate of Rs.3.60 p/u against approved power purchase cost Rs.2.97 p/u. This rate is even higher than the average BST among four DISCOMs which is Rs.3.12 p/u. Therefore, any loss to the applicant on account of exceptional increase in power purchase cost can suitably be addressed by the Commission in true up after proper check with prudence.
- (i) As regards the calculation of the petitioner regarding expected revenue surplus available from Q1 of FY 2022-23, TPWODL stated that the revenue generated out of additional power purchase is purely as per the provisions of regulatory norms and surplus if any has to be dealt as per provisions of applicable law and regulations. The calculation as made by the applicant is unjust and unlawful which is totally incorrect and has no basis at all. It is the prerogative of the Commission under provisions of the Act and Regulations to determine the tariff and pass through any adjustment in the truing up exercise subject to prudence checks.
- (j) The appellant has erred in considering proportionate approved sale quantum on a monthly or quarterly basis and purchasing additional power of 1278 MUs from costly thermal power plants and through power exchange/over drawl from grid and banking arrangement. The appellant should have taken the actual sales till the end of financial year as projected and any shortfall at the end of year could have been met through appropriate power purchase in accordance with the vesting order which provides for the power procurement conditions necessary to be followed by the applicant for fulfillment of its obligation as bulk supplier in the State.
- (k) TPWODL submitted a comparison of the month wise energy input for FY 2019-20, FY 2020-21, FY 2021-22 & FY 2022-23. As per such comparison, there is always decreasing trend in the power procurement during the second half of the financial year as compared to the first half. The Commission in its tariff order dated 24.3.2022 has also allowed drawing of power without payment of over

drawl penalty to any industry having CGP with CD up to 20 MW willing to avail power from DISCOMs up to double the CD.

- (l) It is paying for the power to GRIDCO at the highest rate of Rs.3.60 p/u which is almost 0.62 p/u more than the approved average power purchase cost of Rs.2.97 p/u. The DISCOMs moreover irrespective of the drawl pattern of the consumers are under universal service obligation to supply the power to the consumer as and when required in its area of supply. The drawl of the TPWODL for Q1 of the current year is also within the permitted limit.
  - (m) Therefore, as per the Commission order dated 24.3.2022 in Case No. 107 of 2021 the financial impact arising out of variation in the approved and actual energy purchase is being taken care of in the truing up exercise of the applicant.
5. The Respondent - TPNODL in his detailed reply dated 07.11.2022 has mainly submitted as under :-

TPNODL has similar views to what has been stated by the other respondent TPWODL. The drawl of power varies depending upon seasonal variation, TPNODL has not drawn additional power beyond the approved except in June, 2022 wherein, over drawl of 12.8% was made and the drawl during Q1 of FY 2022-23 is well within the normal range of seasonal variation and it cannot be termed as over drawl of power beyond the approved quantity.

6. The Respondent - TPCODL vide his reply dated 08.11.2022 has mainly submitted as under :-
- (a) TPCODL has also taken the similar views of TPWODL and has stated that GRIDCO's petition is not inconsonance with tariff regulation. The regulatory principles provide for an annual true up of uncontrollable cost based on annual accounts of DISCOMs and whose impact is thereafter factored in the determination of GRIDCO's average power procurement cost and the BSP payable by DISCOMs in the RST tariff order. Any deviation of such regulatory principles shall be bad in law and creating regulatory uncertainty. The GRIDCO's contention that TPCODL had made unrealistic demand forecast of power procurement is not correct. The Commission had approved about 11% increase of actual demand of FY 2021-22 for the FY 2022-23. On the analysis of



the elasticity of demand vs GSDP of 0.6% the power demand would grow by around 8% which is lower than the 11% growth approved by the Commission.

- (b) TPCODL has no revenue surplus at the end of FY 2023 as it has negative ASL recovery of amount of Rs.386 cr. The present deficit pointed out by GRIDCO is only transient and the working capital issue gets addressed annually through truing up process. The present regulation does not allow for midyear interim true up.

7. The Respondent - TPSODL vide his reply dated 15.11.2022 has submitted as under :-

- (a) There is no provision under the regulation to pass on this cost in middle of the financial year. The petition is therefore not admissible on this ground. GRIDCO has effectively filed this petition in the form of true up petition which is envisaged only on annual basis. Any variation of power purchase cost has to be assessed only after the entire year is over particularly when the prices of power have stabilized or rather reduced over the period from April 2022- Oct, 2022.
- (b) As regards the contention of GRIDCO relating projection of unrealistic demand by TPSODL, the Commission approved sales to DISCOMs by GRIDCO to the tune of 29500 MU against the availability of 36391 MU for FY 2022-23. Since the availability is much higher, the contention of GRIDCO that it had to purchase costlier power to meet the demand of DISCOMs cannot be attributed to DISCOMs since GRIDCO already has surplus power to meet the load of DISCOMs. The shortage if any created in the Q1 of FY 2022-23 may be attributable to non-availability of generation sources rather than increase in load of DISCOMs or due to unrealistic demand projections by DISCOMs.
- (c) Based on data provided GRIDCO in their petition, it computed impact of additional power purchase on the average power purchase price for April, 2022, May, 2022 and June, 2022. From the computation, it is found that the average power purchase price for GRIDCO is only Rs.3.03 per kWh for Q1 of 2022-23 as compared to the approved cost of Rs.2.98 per kWh and hence the impact on GRIDCO is only 5 paise/kWh which is much lower than what is projected by the GRIDCO in their petition and clearly does not warrant any revision of BSP. As regards the revenue surplus stated by the GRIDCO, TPSODL stated that GRIDCO has adopted a simplistic method of computation of surplus without

considering the expenses incurred by the DISCOMs. It is pertinent to mention that TPSODL in the recently filed tariff petition has projected a gap of Rs.211 cr. by the end of FY 2022-23.

**Rejoinder of the Petitioner - GRIDCO**

8. The Petitioner vide his rejoinder dated 03.12.2022 has mainly submitted as under :
- The Commission vide its order dated 24.3.2022 in Case No.107 of 2021 has approved Power Purchase Cost of Rs.9071.93 Cr. for purchase of 30474.23 MU @ 297.69 P/U (including cost of power for State requirement and emergency sale to CGPs, i.e., NALCO & IMFA, PGCIL charges) for the Petitioner GRIDCO against which the average Bulk Supply Price (BSP) of 312.34 P/U was allowed to be recovered from the Distribution Licensees (herein referred as “DISCOMs”) for FY 2022-23. The Petitioner through this application has requested the Commission to kindly allow recovery of Rs.283.87 Cr. from the DISCOMs towards increase in power purchase cost through an interim Order considering surplus revenue available with DISCOMs during the first quarter of FY 2022-23. The request was made considering steep increase in the power purchase costs of GRIDCO due to additional power purchase cost at higher rate from the existing power purchase portfolio and even at higher cost from power exchange by GRIDCO in view of unprecedented demand growth over and above he approved quantum of sale to DISCOMs. According to the Petitioner – GRIDCO, it has a limited submission for matching of cash flow arisen due to additional cost incurred towards additional drawl by DISCOMs. Therefore, the present petition seeks recovery of additional cost due to unprecedented demand surge by the DISCOMs, which was incurred and duly paid to the generators.

**Analysis and Decision**

9. Based on the pleadings and submissions made by the parties, the following issue arises for our consideration.

“Whether Petitioner – GRIDCO is to be allowed to avail additional cost for purchase of additional power prior to completion of the FY in view of increase in the power purchase cost during the first quarter of 2022-23.”

**The above issue is being dealt with in the succeeding paragraphs :**

10. The Commission had taken cognizance of the petition filed by the petitioner GRIDCO along with the submissions made by the respondent - DISCOMs. GRIDCO has filed this

application to allow the additional power purchase cost of Rs.283.87 cr. through an interim order as the same is incurred due to unprecedented demand growth over and above the approved sale to DISCOMs resulting in procurement of additional power at marginal cost from the existing power purchase portfolio and at higher cost from power exchange due to unfavourable market conditions. According to the Petitioner, this increase in power purchase cost of Rs.283.87 cr. during the first quarter may be allowed by the Commission considering surplus revenue available with the DISCOMs during the said quarter for FY 2022-23. It is submitted by GRIDCO that for the months of April, May and June, it had to purchase additional power of 1278.33 MU compared to the approved proportionate quantum of power for the quarter. Further, GRIDCO submits the reasons for such increase in power purchase cost are mainly due to the fact of unrealistic demand forecast by the DISCOMs (increase in demand by about 17%), sharp increase in the market price in the power exchanges (average market clearing price was about Rs.7.77 per kWh), mandatory blending of imported coal (upto 30%) by the Thermal Stations as per the Govt. of India circular and multiple outages of the approved generating stations (OPGC Stage-2, Darlipali-1 of NTPC) at such time. GRIDCO had also procured power from Jindal India Thermal Power Plant Ltd. (JITPL), which was not approved by the Commission, at the rate Rs.3.36 p/u. GRIDCO through its assessment has calculated an expected revenue surplus of Rs.596.89 cr. available to the four DISCOMs due to additional demand and sale of power in the first quarter of FY 2022-23.

11. The above four DISCOMs in their individual submissions have opposed the petition of the GRIDCO for allowing any additional cost on the pleas indicated above. DISCOMs have stated that as per OERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulation, 2014, the issue shall be taken up in the annual truing up exercise. They have also questioned the maintainability of the petition since the instant application appears to be a review petition in disguise. Moreover, they have also objected to the computation of Petitioner regarding surplus revenue availability with DISCOMs during Q1 of FY 2022-23 as the same has not been done properly. DISCOMs have also stated that the over drawl during the first quarter was for a very brief period by the industries owing to coal shortage scenario and substantial increase in coal cost due to blending of imported coal in the thermal generation. Further,

there was a demand surge from the large industrial consumers who started operating at their rated capacity after the Covid-19 scenario and Commission has allowed industry having CGP with CD upto 20 MW to avail power from DISCOMs upto double the CD without payment of overdrawal penalty. On the whole, most of the DISCOMs have stated that the drawl was within the permitted SMD and they are of the view that purchase of power will decrease in the subsequent quarters.

12. After due consideration of the petition of GRIDCO and submissions of the DISCOMs, the Commission does observe that the increase in drawl by the DISCOMs (within permitted SMD) during the aforementioned first quarter was due to the reasons beyond the control of the DISCOMs. Such over drawl is mainly due to surge in power demand by the large industries, particularly CGP, after Covid-19 and due to coal shortage and increase in cost of coal. It is pertinent to mention here that the Commission conducts regular annual truing up of the Petitioner - GRIDCO to analyse the financial impact due to variation in the approved and actual power purchase cost for supply of power to DISCOMs. The Commission in the past has not conducted any assessment of variations in the power purchase cost or any other expenses of GRIDCO before completion of a Financial Year. Hence, the Commission takes cognizance of the higher power purchase cost of GRIDCO during the first quarter of 2022-23, which will be analysed in detail during the annual truing up exercise of the financial year.
13. With the above observations, the case is accordingly disposed of.

**Sd/-**

**(S. K. Ray Mohapatra)**  
**Member**

**Sd/-**

**(G. Mohapatra)**  
**Officiating Chairperson**