

**ODISHA ELECTRICITY REGULATORY COMMISSION  
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,  
CHANDRASEKHARPUR,  
BHUBANESWAR-751021**

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**Present: Shri S. C. Mahapatra, Chairperson  
Shri G. Mohapatra, Member  
Shri S. K. Ray Mohapatra, Member**

**Case No. 92/2022**

M/s. Shri Avantika Power Projects Private Ltd. .... Petitioner  
Vrs.  
GRIDCO Ltd. & Others ..... Respondents

**In the matter of: Application under Sections 61, 62 & 64 of the Electricity Act, 2003 read with Regulation 61 of the OERC (Conduct of Business) Regulations, 2004 for determination of Project Specific Tariff for the 18MW Small Hydro Electric Project of the Petitioner.**

**For Petitioner:** Ms. Kritika Khana, Ms. Swapna Seshadri, Learned Advocates on behalf of the Petitioner- M/s. Sri Avantika Power Projects Private Ltd.

**For Respondent:** Shri R.K. Mehta, Learned Senior Advocate on behalf of GRIDCO Ltd. and Shri Subrat Kumar Nayak, S.E (PP&M)-cum-DEI on behalf of the EIC (Electricity)-cum-PCEI, Bhubaneswar and the Department of Energy, Government of Odisha.

**ORDER**

**Date of Hearing: 17.10.2023**

**Date of Order: 17.10.2023**

The present application has been filed by the Petitioner- M/s. Shri Avantika Power Projects Pvt. Ltd. (hereinafter referred to be as 'M/s.APPPL') under Sections 61, 62 and 64 of the Electricity Act, 2003, read with Regulation 61 of the Odisha Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, for determination of project specific tariff of its 18 MW Small Hydro Electric Project (SHEP).

2. In its application, the Petitioner has submitted that the capital cost of the project of its 18 MW SHEP has been increased from the approved estimated cost of Rs.126.92 crore to Rs.166.70 crore on account of carrying cost for delay in execution of the project due to the force majeure events not attributable to the Petitioner. As per Clause (1)(b)(7) of the PPA, the capital cost shall mean the actual completed cost of the project as on the cut-off date as per the audited accounts of the company certified by the Chartered Accountants and approved by the STC or the normative/benchmark capital cost as fixed

by this Commission, whichever is less. The same shall be the basis for determination of the project specific tariff. Accordingly, the Commission may re-determine the tariff of the subject SHEP considering enhanced project cost.

3. The Respondent-GRIDCO has submitted that the Commission, vide its order dated 07.05.2022, in Case No.100 of 2021, has determined the project specific tariff of the subject SHEP of the Petitioner basing on the approved project cost of Rs.126.97 crore. In the said case, the Petitioner had also raised the issue of enhancement of the project cost and the Commission in its order, had allowed the liberty to the Petitioner to file petition for the project specific tariff in future after approval of such enhanced the project cost by the State Technical Committee (STC). Since the STC has not yet approved the revised project cost of the SHEP of the Petitioner, the instant petition is not maintainable in the eye of law and hence, may be rejected at the stage of admission.
4. The Representative on behalf of the Respondent-EIC (Electricity)-cum-PCEI, Bhubaneswar has submitted that the project cost would have been reviewed, if received within the time limit with sufficient clarificatory documents either on the basis of any change in design parameter duly approved by the STC prior to particular construction or additional cost due to delay in construction that is to be approved by STC. The details drawing and designs of the Petitioner's SHEP have been adopted by the STC only after duly vetted from the Empanelled Agency-IIT, Roorkee and the STC has approved the project cost. The STC can only modify the project cost, if the Petitioner submits duly vetted project cost including quality and quantity assurance certificate within stipulated time period. In the case at hand, the Petitioner has failed to produce such documents, for which the revised project cost could not be accepted by the STC. Further, the Clause 2 of the TEC issued on 28.04.2014 stipulates that the project cost of Rs.126.97 crore allowed for the subject project of the Petitioner shall not be enhanced further.
5. The Representative of the Respondent-EIC (Electricity)-cum-PCEI, Bhubaneswar has further submitted that the Petitioner has not objected the time extension given to it without any escalation in the approved project cost, which means the Petitioner has accepted the terms of the time extension. Therefore, the project cost as approved by the STC in the TEC of the project may not be enhanced further.
6. Heard the parties through hybrid arrangement on the prayer of the Petitioner and considered their submissions. We observe that the Commission, in its order dated

07.05.2022 in Case No.100 of 2021, had determined the project specific tariff at the rate of Rs.5.06 per kWh for the subject SHEP of the Petitioner-M/s. APPPL considering the approved project cost of Rs.126.97 crore and applying the norms of 3<sup>rd</sup> control period. The observations and directions of the Commission in the said order dated 07.05.2022 are stated as hereinafter:

*“10. Heard the parties through virtual mode of hearing. Considering the submissions of petitioner and respondent-GRIDCO, the Commission has observed the followings:*

- (a) The construction could not commence due to delay in getting permission from Govt. agency for blasting, which is also covered under Force Majeure condition as per Clause 12 of IA. This is considered to be beyond the control of the petitioner.*
- (b) The challenges in execution of project in Koraput district & other reasons mentioned by the petitioner are considered to be cause of further delay in commissioning of the SHEP.*
- (c) On account of the above difficulties, Department of Energy, GoO has considered the request of the petitioner and granted extension of time for completion of the project from time to time and final extension was granted upto December, 2021 without any escalation of the project cost and the SHEP was commissioned during October, 2021 i.e. before final extension date.*
- (d) The petitioner has sought for applicability of the relevant control period for determination of tariff and the project escalation cost is not the subject matter of the present petition and the petitioner has further submitted that the project is entitled to get the Generic Tariff as per the control period during which the project has been actually commissioned.*
- (e) As per PPA, the project was to be implemented in 36 month from the date of signing of the Implementation Agreement excluding any delay due to force majeure conditions.*
- (f) The Commission vide its order dated 16.02.2019 in Case No. 46/2018 has considered the normative capital cost of Rs.707 Lakh/MW for determination of tariff for SHEPs having capacity between 5 MW and 25 MW. In this order, the Commission has also fixed all the operating and financial norms for calculation of tariff of SHEPs.*
- (g) The State Technical Committee has approved the project cost at Rs.126.97 Crore for the subject 18 MW SHEP. Accordingly, per MW project cost comes as Rs.705.39 Lakh.*
- (h) As per Clause (1) (b) (7) of the PPA the capital cost shall mean the actual completed cost of the project as on the cutoff date as per the audited accounts of the company certified by the Chartered Accountants and approved by STC or the normative/benchmark capital cost as fixed by OERC whichever less. The same shall be the basis for determination of project specific tariff.*
- (i) Though the petitioner has stated that the project cost has been increased from Rs.126.97 Crore to Rs. 165 Crore (approximately) on account of carrying cost due to the force majeure events, the same has not been approved by the STC.*

11. In view of the above observations, the Commission found that the commissioning of the subject SHEP has been delayed due to force majeure conditions and various other reasons mentioned above which were beyond the control of the petitioner. Therefore, as per Clause 6.1.6 of the PPA, the tariff norms as decided by the Commission in its order dated 16.02.2019 in Case No. 46/2018 for the 3<sup>rd</sup> control period shall be applicable for the subject SHEP of M/s. SAPP as the project has been commissioned during the 3<sup>rd</sup> control period. However, in the PPA there is no mention about applicability of generic tariff for the subject SHEP. Therefore, considering the approved project cost of Rs.126.97 Crore and applying the operating and financial norms for calculation of tariff of SHEPs, the computed tariff for the subject SHEP of M/s. SAPP works out to be Rs.5.06 per kWh and the Commission approves the tariff of Rs.5.06 per kWh for Saphthdhara SHEP of the petitioner M/s. SAPP and the same shall be applicable w.e.f. the date of commercial operation. The Commission directs GRIDCO to settle the bills of the petitioner accordingly. It is further to mention that, in the BSP order of the Commission for the current FY 2022-23, while computing the ARR of GRIDCO, the tariff for the Saphthdhara SHEP of the petitioner has been considered @ Rs.4.26 per kWh based on the submission of GRIDCO. The shortfall in ARR of GRIDCO on account of such revision of tariff for Saphthdhara SHEP in the present petition shall be considered in the ARR for the next year or in the Truing Up of GRIDCO's account. **The Petitioner is at liberty to file petition for project specific tariff in future if there is any change in the approval of the project cost by State Technical Committee."**

7. Now, in the present petition, the Petitioner has sought for redetermination of project specific tariff by the Commission on the basis of the enhanced project cost which has not been approved by the STC, Government of Odisha. At this stage, it is pertinent to refer to Clause 1.0 (b) (7) of the PPA executed between the Petitioner-M/s. APPPL and GRIDCO which is quoted as hereunder:

*"Capital Cost shall mean the actual completed cost of the project as on the cut off date as per the audited accounts of the company certified by the Chartered Accountants and approved by STC or the normative/benchmark capital cost as fixed by OERC whichever less. The same shall be the basis for determination of Project Specific Tariff."*

The Petitioner had accepted the aforesaid Clause of the PPA with eyes open without any semblance of controversy.

8. Accordingly, the project specific tariff was determined by the Commission basing on the project cost approved by the STC applying the norms of the 3<sup>rd</sup> control period in Case No.100/2021. It is clear from the submissions of the Representative of the EIC (Electricity)-cum-PCEI, Bhubaneswar that they have not approved the enhanced project cost as proposed by the Petitioner and also earlier, the Petitioner had not objected the time extension allowed by the STC for the said project without any

escalation in the approved project cost. Therefore, the project cost, which forms the basis for earlier tariff determination, remains unchanged. The PPA is a sacrosanct contract document executed between the Petitioner and the Respondent-GRIDCO on the basis of Techno Economic Clearance (TEC) issued by the STC, Government of Odisha. The Clause 2 of the revised TEC issued on 28.04.2014 stipulates:

*“In exercise of power vested with the State Technical Committee by Government of Odisha, the Committee hereby accords Techno Economic Clearance of the proposal with its estimated project cost of Rs.126.97 Cr. (Rupees One Hundred Twenty Six Crores &Ninty Seven Lakhs) including IDC with the following stipulations.*

*The project cost now allowed shall not be enhanced further. The developer shall not claim any extra cost for approval and shall undertake to bear in their account with the minimum guaranteed generation of energy projected in the revised DPR without revision of any tariff. xxx xxxxxx”.*

The above stipulation in TEC has not been controverted by the Petitioner at the time of execution of the PPA with the Respondent-GRIDCO.

9. It is axiomatic that the Commission in its wisdom cannot substitute the revised project cost as claimed by the Petitioner in place of the earlier approved project cost by TEC and accepted by the Petitioner. Thus, in view of the scenario stated above, it is not prudent to re-determine the project specific tariff on the basis of the proposed enhanced project cost submitted by the Petitioner, which is not approved by the STC and also does not fulfill the conditions laid down in the PPA.
10. Therefore, the present application filed by the Petitioner praying for redetermination of project specific tariff with the enhanced project cost stands rejected as not maintainable on facts and law.
11. Accordingly, the petition is disposed of.

Sd/-  
**(S.K. Ray Mohapatra)**  
**Member**

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

Sd/-  
**(S.C. Mahapatra)**  
**Chairperson**