

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT No.4, CHUNOKOLI, SHAILASHREE VIHAR,
BHUBANESWAR – 751 021

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

Case No. 135/2023

M/s. GRIDCO Ltd. Petitioner

Vrs.

M/s. NTPC Ltd.& Others Respondents

In the matter of: **Application by GRIDCO Ltd. under Section 86 (1) (b) of the Electricity Act, 2003 read with Sections 11 (1) (e) of the OER Act, 1995 and other enabling provisions seeking approval of Power Purchase Agreement (PPA) executed between NTPC Ltd. (KBNU) and GRIDCO Ltd. on 27.12.2010 for purchase of power from (2 X 195) MW, Muzaffarpur Thermal Power Station (MTPS), Stage-II, Bihar in the Eastern Region.**

For Petitioner: Ms. Madhusmita Mishra, DGM (Ele.) and Sri Durga Madhab Sahoo, AGM (Ele.)

Respondents: Ms. Swapna Seshadri, Advocate on behalf of M/s. NTPC Ltd. (M/s. Kanti Bijlee Utpadan Nigam Ltd.), Ms. Sonali Pattnaik, Manager (Legal), Department of Energy, Government of Odisha, Shri Subhashree Das, AGM (RTC), OPTCL and Shri Bharat Bhadawat, Chief-Regulatory, TPCODL and Shri K.C. Nanda, G.M (Regulatory Affairs & Strategy), TPWODL do appear. None appears on behalf of the Ministry of Power, Government of India, SLDC, TPNODL & TPSODL.

ORDER

Date of hearing: 19.11.2024

Date of Order:07.01.2025

The Petitioner-M/s. GRIDCO Ltd. has filed the present petition seeking approval of the Power Purchase Agreement (PPA) executed on 27.12.2010 between M/s. Kanti Bijlee Utpadan Nigam Limited (M/s. KBUNL) and GRIDCO Ltd. for purchase of power from (2 X 195) MW, Muzaffarpur Thermal Power Station (MTPS), Stage-II, Bihar in the Eastern Region in view of the increasing demand in the State and the changed scenario of implemented rules by the Ministry of Power (MoP), Government of India (GoI) such as the notification dated 28.06.2023,

issued by MoP, GoI stipulating the Guidelines for Resource Adequacy Planning for energy security to the State in the long run. However, based on the request of the GRIDCO, the Commission had earlier disapproved the PPA dated 27.12.2010 executed between M/s. Kanti Bijlee Utpadan Nigam Limited (M/s. KBUNL) & GRIDCO for purchase of State's share of power (30 MW) from 390 MW Muzaffarpur Thermal Power Station (MTPS) Stage-II.

2. Now changing its stand, in support of its prayer, the Petitioner- GRIDCO Ltd. has submitted as under:

- a) During 2014, the actual load growth was not in tandem with the projection of load growth in the 17th EPS of the CEA and therefore, the Board of Directors of GRIDCO, in their 153rd meeting, had decided to surrender the allocated power from upcoming NTPC stations located outside the State to reduce the liability of payment of fixed cost burden and to protect the interests of the consumers. However, GRIDCO Ltd. in Case No.27 of 2018 had approached the Commission with the PPA dated 27.12.2010 executed between M/s. Kanti Bijlee Utpadan Nigam Limited (M/s. KBUNL) & GRIDCO for purchase of State's share of power (30 MW) from 390 MW Muzaffarpur Thermal Power Station (MTPS) Stage-II, wherein it was prayed before the Commission to discharge GRIDCO from buying power from the said thermal power station as the project could not be commissioned within a reasonable time after execution of PPA and GRIDCO had no option to make alternative arrangements to meet its statutory obligations of supplying power to the DISCOMs for meeting the power demand of the State.
- b) Accordingly, the Commission, vide its order dated 04.10.2021 in Case No.27 of 2018, had not approved the aforesaid PPA dated 27.12.2010 and directed GRIDCO to take steps in coordination with the State Government for deallocation of the State share of power from M/s. KBUNL and regarding force scheduling of power to GRIDCO from the said generating station, GRIDCO was advised to approach the appropriate forum for relief. In consonance with the above directions of the Commission, the Government of Odisha had taken up the matter with the Ministry of Power, Government of India for the deallocation of Odisha's share of power from M/s. KBUNL. However, the Government of India has clarified that till the time of reallocation, the original beneficiary is liable to pay the fixed charges.
- c) Being aggrieved by the aforesaid order dated 04.10.2021 of the Commission passed in Case No.27 of 2018, NTPC had filed an appeal before the Hon'ble APTEL vide Appeal No.330

of 2021 and the Hon'ble APTEL, vide their order dated 17.12.2021 in the said Appeal, had granted the stay on the said order dated 04.10.2021 of this Commission.

Subsequently, the Hon'ble APTEL, vide its order dated 13.08.2024, has dismissed the Appeal in Appeal No. 330 of 2021 and IA No. 1301 of 2024 & IA No. 1691 of 2022 as withdrawn, leaving it open to the Commission to consider Case No. 135 of 2023 in accordance with the law, without being influenced by the observations made in its earlier Order dated 04.10.2021.

- d) In the meantime, the MoP, GoI had allowed reallocation of the Odisha share of power of the subject power station in favour of TANGEDCO, Tamilnadu for a period of 14 months only i.e. from 30.03.2022 to 29.05.2023. Thereafter, the State share of power from M/s. KBUNL is being scheduled to GRIDCO. Since GRIDCO has to pay the fixed charges of the power station, it is availing the said power for the State which is either being utilised for consumption of the State during the exigency conditions or sold in the power market to earn additional revenue after meeting the State demand.
- e) The landed cost of power including the transmission charges & losses is approx. Rs 6.19 per unit for MTPS-II and this power is being utilized during peak deficit or any exigency condition of the State such as an outage of the large units of generators during which GRIDCO would have to rely on a highly priced short-term market or over-drawl from the grid which is not advisable. The present power cost per unit from the short-term market is hovering around Rs10/unit and the availability of such power is sometimes still uncertain. Accordingly, it is prudent for the State to avail power from MTPS-II in the interests of the consumers of the State to avoid procurement of power at a high cost from the short-term market. In the instant case, since the allocation has already been made in favour of Odisha, GRIDCO Ltd. is liable to pay the fixed charges as per the Regulations. Now GRIDCO has approached the Commission for approval of the aforesaid PPA dated 27.12.2010 for purchase of the State share of power from MTPS Stage-II of NTPC in view of the rising demand of the State and the notification of MoP, GoI for Resource Adequacy Planning for energy security to the State in the long run.
- f) Apart from the existing Central Thermal Power Stations, the purchase of power from the upcoming thermal power stations like NLCIL, Talabira (800 MW) and Talacher Expansion Project (660 MW) has already been approved by the Commission for meeting the future load growth, taking into consideration the forecast made by the DISCOMs as well as the 20th EPS of the CEA. In addition, the Odisha Renewable Energy Policy, 2022 has been

notified to accelerate the adoption of clean energy and promote the development of RE projects in the State.

- g) The Ministry of Power (MoP), Government of India (GoI), looking into the power demand and ensuring the energy security of the country, has set an ambitious target of an additional 80 GW thermal power capacity by the year 2031-32. A provisional LGBR has been prepared by the GRIDCO Ltd. considering the demand projection by the DISCOMs as well as the demand projection made in the 20th EPS of CEA. As per the MoM dated 13.06.2024, held under the Chairmanship of the Hon'ble Minister of Power, GoI to review the progress of thermal capacity addition, the peak demand of the country has touched 250 GW and the CEA has made a revised peak demand projection of the country as 384 GW by FY 2031-32. The State's peak demand has also touched 6700 MW during the last summer due to the rapid growth of the economy as well as the domestic requirements. Though there would be an average surplus capacity in the State during the FY 2024-25 to FY 2028-29, a huge peak deficit would be observed in the said period, even if, considering the power availability from MTPS-II and BSTPS-I. Any overdrawl to meet the deficit power from the short-term market may lead to higher costs or GRID disturbances. Hence, the role of thermal capacity addition in meeting the peak as well as the State demand is inevitable and cannot be ruled out. GRIDCO is therefore maintaining a prudence check between the thermal as well as renewable capacity addition to meet its requirements on various aspects like peak deficit requirements, RPO target etc.
 - h) GRIDCO has been following the MOD principle to draw the cheap power for the State. However, during the exigency condition of the State or during the outage of the large units of the Generator, the power is drawn from sources like KBUNL, ensuring the continuous supply of power to the ultimate consumers of the State. Further, during the surplus and favourable market conditions, the power is sold in the market to pass on the benefits to the ultimate consumers.
3. The Respondent-NTPC Ltd. has made submissions as under:
- a) The Ministry of Corporate Affairs has sanctioned the amalgamation between the Nabinagar Power Generating Company Limited and KBUNL with NTPC and the amalgamation became effective from 26.08.2022.
 - b) The Central Government continues to exercise the power of allocation of electricity as a sovereign function under the Article 73 of the Constitution of India. Such an allocation cannot be rescinded in a proceeding under Section 86(1) (b) of the Electricity Act, 2003.

This Section of the Act is a statutory power that can be exercised by this Commission only if the same is not in conflict with the legislative powers being exercised by the Central Government under the Article 73 of the Constitution of India. Therefore, on the allocation of power by the MoP, GoI, there is no question of denying approval of PPA under Section 86 (1)(b) of the Electricity Act, 2003.

- c) The PPA, which has been in force since 2010 and is being honoured by both parties, cannot be disapproved at this stage. As admitted by GRIDCO, it has utilised the electricity from the said power station to meet its demand and also sold the power in a surplus situation to optimize its revenue. It is further admitted by GRIDCO that there is a substantial increase in the State demand and it would require the power allocated from Muzaffarpur Thermal Power Station (MTPS) of M/s. KBUNL / NTPC. Therefore, the Commission should approve the said PPA dated 27.12.2010 executed between GRIDCO & M/s. KBUNL and as per the Regulation 55 of the CERC (Terms & Conditions of Tariff) Regulations, 2019, fixed charges have to be paid as long as the allocation persists.
 - d) Any expenditure proposed to be incurred either on FGD or other capitalisation will be claimed by the NTPC in the tariff/truing up petitions to be filed before the Central Commission with GRIDCO, being arrayed as a Respondent. Since the FGD is yet to be implemented, the expenditure on this account will be known in due course and shall be claimed before CERC as per extant Tariff Regulations.
4. The Respondent-TPWODL has submitted that in view of the requirements of the coal-based thermal power and increase in renewable energy share as per the Government policy and taking into account the upcoming power demand scenario of the State and opinion on the Merit Order Dispatch principles, the Commission may take a decision in the matter of approval of the subject Power Purchase Agreement (PPA).
5. The Respondent-TPNODL has made submissions as under:
- a) In the BST order for FY 2024-25, the Commission has accepted the proposal of GRIDCO for purchasing the power from all available sources of the Central Generating Stations including Muzaffarpur TPS, Stage-II, as the order of the Commission pertaining to disapproval of PPA in respect of MTPS has been stayed by the Hon'ble APTEL and allowed drawl of 225.84 MU from MTPS in FY 2024-25.
 - b) Though the subject PPA for drawl of power from MTPS has not been regularized, the power procurement of 225.84 MU has been approved by the Commission from MTPS in

FY 2024-25 in the BST Order of GRIDCO and hence, the Commission may suitably decide the matter.

6. The Respondent-OPTCL has submitted that it doesn't have any objection to the Petition of GRIDCO and the Commission may pronounce its prudent order considering the facts and circumstances of the case.
7. We heard the Petitioner and Respondents through hybrid mode (Virtual/Physical) and considered their written submissions and replies to the queries of the Commission. The Commission observes that:
 - a) A Power Purchase Agreement was signed between M/s. Kanti Bijlee Utpadan Nigam Limited (KBUNL) and GRIDCO on 27.12.2010 for purchase of the State's share (30 MW) of power from Muzaffarpur Thermal Power Station, Stage-II (2x195 MW) known as "Principal Agreement". M/s. KBUNL, which was a wholly owned subsidiary of NTPC Limited with erstwhile Bihar State Electricity Board, as a minority partner, was amalgamated with NTPC on 26.08.2022 and NTPC has taken over the business of M/s. KBUNL.
 - b) The Commission, vide its order dated 04.10.2021 in Case No.27 of 2018, had not approved the aforesaid PPA dated 27.12.2010 based on the submissions of the GRIDCO Ltd. and directed GRIDCO to take steps in coordination with the State Government for deallocation of the State share of power from M/s. KBUNL. Accordingly, the Government of Odisha had taken up the matter with the Ministry of Power, Government of India for deallocation of Odisha's share of power from M/s. KBUNL. However, the Government of India had clarified that till the time of reallocation, the original beneficiary is liable to pay the fixed charges.
 - c) Being aggrieved by the aforesaid order dated 04.10.2021 of the Commission, NTPC had filed an Appeal before the Hon'ble APTEL vide Appeal No.330 of 2021 and the Hon'ble APTEL, vide their order dated 27.12.2021, had granted the stay on the said order dated 04.10.2021 of this Commission.
 - d) The MoP, GoI had reallocated the Odisha share of power of the subject power station in favour of TANGEDCO, Tamilnadu for a period of 14 months only i.e. from 30.03.2022 to 29.05.2023. Thereafter, the State share of power from M/s. KBUNL is being scheduled to GRIDCO. In such a scenario, as GRIDCO has to pay the fixed charges, it is availing the said power for the State, which is either being utilised for consumption of the State

during exigency conditions or sold in the power market to earn additional revenue after meeting the State demand.

- e) GRIDCO has submitted that though the landed cost of power including the transmission charges & losses is about Rs 6.19 per unit for MTPS-II, such power is being utilized during peak deficit or any exigency conditions in the State, otherwise GRIDCO would have to rely on a highly priced short-term market to meet the State demand in such condition. Further, the present cost of power from the short-term market is hovering around Rs10/unit and the availability of such power is uncertain. In addition, in the instant case, as the allocation of power has already been made in favour of Odisha, the liability of fixed charges for the State share of power from the subject power station lies with GRIDCO.
- f) Pending approval of withdrawal of appeal from the Hon'ble APTEL, GRIDCO had filed an application before OERC for approval of the "Principal Agreement" with the averments made in its submissions as aforesaid. Accordingly, the Commission had invited suggestions/ objections from the stakeholders in this matter through public notice and in its interim Order dated 02.04.2024, the Commission had observed that in the BSP order for FY 2024-25, GRIDCO has been allowed to purchase power from MTPS Stage-II of NTPC whenever required, as it has to pay the fixed charges as per the decision of the MoP, GoI.
- g) In the meantime, the Hon'ble APTEL, vide its order dated 13.08.2024, has dismissed the Appeal in Appeal No. 330 of 2021 and IA No. 1301 of 2024 & IA No. 1691 of 2022 as withdrawn, leaving it open to the Commission to consider Case No. 135 of 2023 in accordance with the law, without being influenced by the observations made in its earlier Order dated 04.10.2021.
- h) In response to the query raised by the Commission regarding FGD, NTPC has submitted that since the FGD is yet to be implemented, the expenditure on this account or other capitalisation will be ascertained in due course and shall be claimed before the CERC as per the extant Tariff Regulations.
- i) The role of thermal power in meeting the peak demand and energy requirements of the State is inevitable and cannot be ruled out in the near future. During the surplus and favourable market conditions, such power can be sold in the market and the benefits thereof, can be passed on to the ultimate consumers.
- j) The Commission, vide interim order dated 20.08.2024, had directed both the Petitioner-GRIDCO and Respondent-NTPC to make necessary amendments in the Principal

Agreement in view of changes in the electricity policy and regulations. Further, the Commission, vide its interim order dated 19.11.2024, had directed both the parties to sign the modified Supplementary PPA after resolving all the issues including the issue relating to LC in line with the Electricity (Amendment) Rules, 2022 and submit a copy of the same before the Commission for appraisal. Accordingly, a Supplementary Power Purchase Agreement was executed on 02.12.2024 between GRIDCO Ltd. & M/s. NTPC Ltd. and has been submitted before this Commission for approval.

- k) OPTCL, DISCOMs (TPWODL, TPNODL & TPCODL) have no objection to avail State's share of power from Barh STPS, stage-I as the Commission has already allowed purchase of power from said power plant in tariff order for FY 2024-25 and accordingly, the Commission may prudently decide considering the actual energy requirement of the State.
8. The salient features of Principal PPA dated 27.12.2010 as well as Supplementary PPA dated 02.12.2024 executed between GRIDCO and NTPC are as following:
- a) The Ministry of Power, Govt. of India vide its letter dated 10.12.2010 has allocated 30 MW of Capacity from the Muzaffarpur Thermal Power Station, Stage-II (2x195 MW) to the State of Orissa. The allocation letter issued by the Ministry of Power, Govt. of India shall form an integral part of the Principal PPA.
 - b) The Charges for utilisation of transmission system(s) owned by the Powergrid/other Transmission Licensee for wheeling of the electricity beyond the bus bar of the Station, shall be paid directly by GRIDCO to the Powergrid or the Transmission Licensee as the case may be. NTPC shall not be responsible for the payment of such charges.
 - c) NPTC shall operate the Station as a base load station as per the manufacturers' guidelines, applicable grid operating standards, directions of the CERC and relevant statutory provisions, as applicable from time to time. The methodology of generation scheduling shall be as per IEGC and the decisions taken at ERPC forums.
 - d) All charges/ fees related to the scheduling and dispatch of electricity shall be borne by GRIDCO in proportion to its capacity allocation from the Station.
 - e) NTPC shall make a declaration of the capacity at the busbars of the Station after taking into account the capability of the Station to deliver Ex-Bus which shall be considered while calculating Declared Capacity (DC). GRIDCO shall have the right to schedule this DC in proportion to its allocation from the Station.

- f) A set of Main and Check Meters of 0.25 accuracy class, as per the CEA (Installation & Operation of meters) Regulations 2006 / IEGC as applicable, shall be installed on all outgoing feeders of the Station. GRIDCO shall make all necessary arrangements for the installation of meters of required accuracy and specifications, at all its drawl points.
- g) Both parties agree to facilitate the issue of Regional Energy Accounts. Regional Energy Accounts issued by ERPC/ERLDC or any other Competent Authority shall be binding on all the parties for billing and payment purposes.
- h) The Tariff and other terms & conditions for the electricity supplied from the Station would be as determined by the CERC or such other competent authority from time to time. The Tariff for the sale of electricity from the Station shall comprise of Capacity Charge, Energy Charge, Incentive and all other taxes/charges as per the CERC Regulations or any other guidelines as may be applicable from time to time.
- i) The Charges for the Supply of Electricity under this Agreement shall be billed by NTPC as determined from time to time by the CERC and the same shall be paid by the GRIDCO. In case GRIDCO disputes any amount, even then, it shall pay 95% of the disputed amount forthwith and file a written objection with NTPC within 30 days of the presentation of the bill giving particulars such as the item disputed, with full details/data & reasons of dispute and amount disputed against each item.
- j) Rebate and Late Payment Surcharge shall be as per the Terms and Conditions of Tariff issued by the CERC or any other competent authority as applicable from time to time. No rebate shall be payable on the bills raised on account of taxes, duties, royalty/cess, etc.
- k) As per the Supplementary Agreement, the Letter of Credit (LC) shall cover 105% of the one month's estimated billing with respect to power supplied from the Station to GRIDCO. However, GRIDCO may open LC in accordance with the provisions of Late Payment Surcharge Rules 2022.
- l) The Escrow Agreement and Agreement to Hypothecate Cum Deed of Hypothecation shall be put in place by GRIDCO to the satisfaction of NTPC at least one year before the expiry of the TPA either by efflux of time or otherwise on the assignment of bulk purchase function to a company not owned by Govt of Orissa in line with the Principal Agreement. In the event before the expiry of TPA, GRIDCO does not sign the "Escrow Agreement"

and 'Agreement to Hypothecate Cum Deed of Hypothecation' at least 3 months before the expiry of TPA or GRIDCO creating any superior charge in favour of any other party on its Receivables, NTPC shall have the right to reallocate contracted capacity of GRIDCO to Third Party(ies). In case of termination of this Agreement or reallocation of capacity due to reasons stated above, GRIDCO shall be liable to pay capacity charges for such capacity till the capacity is reallocated.

9. In view of the above observations and considering the need for thermal power to meet peak demand as well as base load/energy requirement of the State in future, the Commission accords in-principle approval to the "Principal Agreement" i.e. Power Purchase Agreement dated 27.12.2010 executed between M/s. Kanti Bijlee Utpadan Nigam Limited (a subsidiary of NTPC Limited with erstwhile Bihar State Electricity Board as a minority partner, which was amalgamated with NTPC on 26.08.2022) and GRIDCO Ltd. as well as the Supplementary Power Purchase Agreement dated 02.12.2024 executed between NTPC and GRIDCO Ltd. for purchase of State's share of power (30 MW) from 390 MW Muzaffarpur Thermal Power Station (MTPS) Stage-II of NTPC to ensure Energy Security of the State in the long run and to avoid procurement of power at high cost from short term market. The Supplementary Agreement shall be considered as an integral part of the Principal Power Purchase Agreement signed on 27.12.2010.
10. The case is accordingly disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson