

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

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

Case No. 42/2023

GRIDCO Ltd.	Petitioner
Vrs.		
DoE, GoO & Others	Respondents

In the matter of: **Application under Section 86 (1) (b) of Electricity Act, 2003 read with Section 11(e) and Section 21 of Orissa Electricity Reform Act, 1995 and other enabling provisions for post-facto approval of the Power Purchase Agreement (PPA) executed between PTC India Ltd. and GRIDCO Ltd. on dated 14.08.2009 for purchase of power from Chukha Hydro Electric Project, Bhutan (4X84 MW-336 MW).**

For Petitioner: Shri B. K. Das, Sr. GM (PP) and Ms. Sasmita Tudu AM (PP) of GRIDCO Ltd.

For Respondents: Shri Ravi Kishore, Advocate on behalf of PTC India Ltd.; Shri K. C. Nanda, GM (RA & Strategy), TPWODL; Ms. Malancha Ghose, DGM (RA), TPNODL; Shri Puneet Munjal, Head (Regulatory Affairs), TPCODL; and Shri V. Wagle, Head (Regulatory Affairs), TPSODL; Ms. Sonal Pattnaik, Manager (Legal), DoE, GoO; and the representatives of OPTCL and SLDC.

ORDER

Date of Hearing: 04.07.2023

Date of Order: 14.07.2023

1. The petitioner- GRIDCO has filed the present petition under Section 86 (1) (b) of Electricity Act, 2003 read with Section 11(e) and Section 21 of Orissa Electricity Reform Act, 1995 and other enabling provisions for post-facto approval of the Power Purchase Agreement (PPA) executed between PTC India Ltd. and GRIDCO Ltd. on dated 14.08.2009 for purchase of power from Chukha Hydro Electric Project, Bhutan (4X84 MW-336 MW).
2. The Petitioner has prayed before this Commission to accord post facto approval of the PPA of Chukha Hydro Electric Project executed between GRIDCO & PTC India Ltd. for procurement of state's share of power from the said Hydro Electric Project.
3. The Petitioner-GRIDCO has submitted the following:

- (a) An agreement on Chukha Hydro Electric Project (CHEP) was signed between Government of India (GOI) and Royal Government of Bhutan (RGOB) on 23.03.1974 with a validity of 99 years. The Agreement provides that surplus power from Chukha, i.e., all power over and above that is required for use in Bhutan shall be sold to India and GoI would purchase all the surplus power. The rate of power would be reviewed at the end of each four year period and review would be guided by the criteria mentioned in Article-8 of the Agreement as mentioned below:

- Increase, if any, in the operation and maintenance charges of the Chukha Project.
- The average percentage increase in the cost of generation of Hydro Electric Power during the previous four years in the Eastern-North Eastern Region of India.
- Any other factor relevant at that time.

Further, no duty, surcharge or any other form of levy will be charged by Bhutan on the power sold by Bhutan to India.

- (b) PTC has signed long term agreements with Department of Energy, Bhutan for purchase of surplus power from Chukha Hydro Electric Project (336 MW) and Kurichhu Hydro Electric Project (60 MW). The agreements became operational from 1st October 2002 and surplus power from these projects is being supplied to the State Power Utilities in India's Eastern Region. Bulk Power Customers of ER entered into an Agreement with PTC on 21.08.2002 for purchase of Chukka Power (Bhutan) with energy tariff @ Rs.1.05/ kWh for the period from 1st June to 30th Sept. and Rs.1.55/ kWh for the period from 1st Oct to 31st May which was subject to revision as per GOI/CERC directives from time to time. This tariff includes 5p/ kWh towards service charge claimed by PTC. As per the provisions made in that Agreement, a rebate of 2.5 paise/ kWh was allowed by PTC for transfer of payment by Bulk Power Customers to PTC account within due date and a rebate of 1.25 paise/ kwh was allowed corresponding to the payment within 30 days from the presentation of the bill. The Due Date was 3 working days from the date of presentation of the bill as per the definition provided in the Agreement. The duration of the Agreement was 5 years.
- (c) Subsequently PTC signed the Amended Agreement (1st Amendment) with Bulk Power Customers on 11.12.2007 with the following modification:

- The Energy tariff for the Chukha Power supplied by PTC shall be determined by GoI from time to time. The present tariff for Chukha Energy is @Rs.1.55/ kWh which is subject to revision as per GoI directives from time to time.
 - Para 15 of the Original Agreement dtd.21.08.2002 was amended as follow:
“The Agreement shall be deemed to have been extended with effect from 1.10.2007 and shall remain operative till 31.03.2017. The Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such further periods as the Parties may mutually agree. In case the Bulk Power Customer(s) continue to get Chukha Power through PTC even expiry of this Agreement without further renewal or formal extension thereof, then all the provisions of this Agreement shall continue to operate till such time this Agreement is formally renewed, extended or replaced.”
- (d) CERC vide its Order dt. 19.12.2008 on suo-motu petition no. 88/2008 have directed PTC to collect trading margin of 4 Paisa/kWh against sale of Chukha Power to ER Constituents and revise PPA accordingly. Accordingly, PTC vide its letter dtd. 04.04.2009 have submitted a draft copy of Amendment No. 2 of PPA to be executed between PTC & GRIDCO. A Memorandum was placed before the Board of Directors in their 123rd BoD meeting of GRIDCO held on 26.05.2009 for signing of the Power Sale Agreement with PTC by GRIDCO for purchase of power from Chukha Hydro Electric Project.
- (e) The PPA (2nd Amendment) was signed between PTC and GRIDCO on 14.08.2009 with the following modifications:
- The Definition of Due date was amended to Seven Working Days from the Date of presentation of the bill.
 - The Trading Margin of PTC was reduced from 5paise/kwh to 4 paise/kwh as per CERC (Fixation of Trading Margin) Regulations, 2006.
 - The Rebate allowed by PTC was reduced from 2.5 paise/kwh to 1.25 paise/kwh for payment within due date.
 - The Delayed Payment Surcharge was changed from 1% per month to 1.25% per month for the period of non-payment beyond the due date.
- (f) The tariff structure of power from Chukha has undergone several revisions from time to time as below:

Period	Tariff (P/U)
w.e.f. 1 st Jan 1990	27
1 st Jan 1994	37
1 st Jan 1997	50
1 st Jan 2001	100

1 st Jan 2005	150
1 st Jan 2009	200
1 st Jan 2013	225
1 st Jan 2017	255

- (g) OERC has been considering the procurement of power from the said Generating Station in the ARR and Bulk Supply Price (BSP) Orders of GRIDCO Ltd. from time to time. The per unit cost of Chukha Hydro Electric Project also comes in the Merit Order List. At present, GRIDCO is purchasing power from Chukha Hydro Electric Project at a rate of Rs.2.4016/Unit (excluding 18.84 paise/unit as subsidy charge & including trading Margin of 4 paise/unit of PTC). Further, Hydro Power is environmental friendly green power and purchase of Hydro Power is always preferable in order to maintain a good Hydro-Thermal Mix.
- (h) In terms of Section (86) (1) (b) of the Electricity Act, 2003 read with Section 11 (e) and Section 21 of the Orissa Electricity Reform Act, 1995 and Clause 51 of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, the PPAs entered into by the Applicant/ Petitioner herein are required to be submitted before the Commission for approval of the same.
- (i) GRIDCO has prayed to condone the delay in filing of the petition.
4. The Respondent TPCODL has submitted that the said PPA is in subsistence since 2002 and the power is being availed since then. Since, the power has been included in the ARR filing of GRIDCO Ltd. for the purpose of determination of Bulk Supply and has been approved by the Commission, the impact in terms of tariff on the DISCOMs have already been factored. The price of Rs.2.4016 per unit is less than the average power purchase cost of Rs.2.75 per unit from Central Hydro stations. Considering that the tariff of Chukha Hydro Electric Project, Bhutan is less than the average tariff of Central Hydro Stations and the Bulk Supply Price of TPCODL, there are no objections in the post facto approval sought by GRIDCO Ltd. for procurement of State's share of power from the aforesaid Hydro Electric Project.
5. Another Respondent TPNODL has submitted that GRIDCO is purchasing power from Chukha Hydro Electric Project (4X86 MW) at a rate of Rs.2.4016/Unit (excluding 18.84 paise/unit as subsidy charge & including 4 paise/Unit Trading Margin of PTC) which is lower than the average Bulk Supply Tariff (BST) rate of the GRIDCO. Commission has been also approving the procurement of power from Chukha Hydro Electric Project in the Bulk Supply Tariff Orders of GRIDCO time to time. Though the PPA has not been approved by the Commission, the impact of the same has been

considered/approved by the Commission and are included in the determination of cost of power purchase in the Tariff Orders of GRIDCO by the Commission. In view of the above, TPNODL have no objection to regularization of above PPA executed between M/s. PTC India Ltd. and GRIDCO Ltd.

6. Another Respondent TPSODL has submitted the following:

- (a) There are several hydro projects situated in Bhutan which are supplying power to India on long term basis. The state of Odisha has a share of 15.19% (51 MW) from Chuka Hydro Electric Project (4 X 86 MW), one such hydro project. The tariff (p/u) of energy from this power plant has been rising regularly from 27 p/u in January 1990 to present tariff of Rs 2.55 per kWh. After considering the GoI subsidy of 18.84 p/kWh and trading margin of 4 p/kWh of PTC, the tariff works out to Rs.2.40/kWh. Further, considering the present transmission loss of Inter State Network of about 3.2%, the tariff to GRIDCO works out to Rs.2.48/ kWh.
- (b) Since the transmission charges are fixed in nature i.e. (Rs/kW/Month) under the BPTA and not depended on the tariff from the plant, the same has not been considered while working out the effective tariff for GRIDCO. However, the tariff from the power plant is not determined by the CERC and is fixed on a formula and understanding provided under an agreement signed between Government of India and Royal Government of Bhutan in 1974.
- (c) As per the terms of agreement, the agreement can be mutually extended, renewed or replaced by another agreement on such terms and for such further period as parties (GRIDCO Ltd. & PTC India Ltd.) mutually agree. Further, the agreement may be mutually replaced. M/s. GRIDCO has not signed any new agreement for fixing the duration or any other terms. The agreement can be in operation even after 31st March 2017 without having any termination clause.
- (d) Based on the data available on Website, the plant was commissioned in 1986. Generally, the tariffs from the Hydro Project are expected to fall after the commissioning as there is no fuel charge included in the tariff.
- (e) Keeping in mind that there is no regulatory oversight of the CERC for tariff, there is no duration fixed for supply of power and the rise in tariff has been considerable (i.e. from Rs.0.27/ kWh in January 1990 to Rs.2.55/ kWh in January 2017 with a CAGR of 8.67% p.a), the Commission is requested to approve the PPA for the period only upto 31st March 2027 i.e. 10 years beyond the original date of 31st March, 2017.

- (f) GRIDCO is requested to approach the Commission before 31st March, 2027 and seek fresh approval for further extension. Commission may grant an extension at that time based on the situation then, particularly the tariff from this plant and also the alternate cost of power prevailing at that time.
7. Another Respondent OPTCL has submitted that the prayer of the petitioner is in line with the relevant provisions of the Electricity Act, 2003, the Orissa Electricity Reform Act, 1995 and the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004. Therefore, OPTCL does not have any objection to the petition of GRIDCO and the Commission may consider the application.
8. Heard the Petitioner and Respondents through hybrid mode, i.e., through video conferencing and physical mode and considered their arguments & written submissions. The Commission observes that:
- a) GRIDCO has filed the present petition under Section 86 (1) (b) of Electricity Act, 2003 read with Section 11(e) and Section 21 of Orissa Electricity Reform Act, 1995 and other enabling provisions for post-facto approval of the PPA executed between PTC India Ltd. and GRIDCO Ltd. on 14.08.2009 for purchase of power from Chukha Hydro Electric Project, Bhutan (336 MW).
 - b) The agreement on Chukha Hydro Electric Project was signed between Government of India (GoI) and Royal Government of Bhutan (RGOB) on 23.03.1974 with a validity of 99 years. The Bulk power customers of Eastern region of India (BSEB, DVC, JSEB, Power Dept. Govt. of Sikkim, WBSEDCL and GRIDCO Ltd.) had entered into an agreement with PTC India Ltd. on 21.08.2002 at a tariff subject to revision as per GoI/ CERC directives from time to time. The agreement became operative from 01.10.2002.
 - c) The agreement has undergone subsequent revisions, i.e., 1st amendment on 11.12.2007 and 2nd amendment on 14.08.2009. GRIDCO Ltd. in this instant case has approached the Commission for approval of PPA with 2nd amendment dt. 14.08.2009 which has reference to the agreement dt. 21.08.2002 and its 1st Amendment dt. 11.12.2007.
 - d) The tariff structure of power from CHEP has undergone several revisions and increased from time to time. The present applicable tariff as determined by GoI w.e.f. 01.01.2017 is Rs 2.55/ kWh from Rs 0.27/ kWh in 01.01.1990. However, GoI is providing a subsidy of Rs 0.1884/kWh to PTC India Ltd. The trading margin of PTC India Ltd. is Rs 0.04/kWh. Therefore, presently the power is

being procured by GRIDCO at Rs 2.40/kWh (after excluding the subsidy and including the trading margin).

- e) The Due date for payment of bill is Seven Working Days from the Date of presentation of the bill. Further, a Rebate of 1.25 paise/kwh is allowed by PTC India Ltd. for payment within due date. The Delayed Payment Surcharge is 1.25% per month for the period of non-payment beyond the due date.
- f) As per terms and conditions of the original PPA and its amendment thereon, the agreement shall remain operative till 31.03.2017 and would be mutually extended, renewed or replaced by another agreement as per mutual agreed terms and condition by the Parties. However, the provisions of the agreement would continue to operate in the absence of any formal revision.
- g) The distribution licensees (TPCODL, TPNODL, TPSODL & TPWODL) have no objection to regularization of PPA as the impact of the power procurement from the said hydroelectric plant is being considered by the Commission every year for determination of cost of power purchase in the ARR & BSP Orders of GRIDCO. OPTCL has also no objection to the petition of GRIDCO.
- h) GRIDCO has prayed to condone the delay in filing of the petition for post-facto approval of the PPA.

9. We are of the opinion that the present tariff for the aforesaid project as per the PPA seems quite competitive if compared with average tariff of central sector hydro projects. Keeping in mind the agreement made between Government of India and Royal Government of Bhutan in 1974, it is reasonable to continue procurement of power from Chukha Hydro Electric project. However, since there is no termination clause in the agreement and the tariff is also not regulated by any Regulatory body/ Commission, the PPA can only be approved for a certain time period considering the interest of consumers of the state. The PPA may be submitted again for approval for procurement of power for subsequent years beyond the approved time period for consideration by the Commission.
10. In view of the above observations and condoning the delay in filing of petition by GRIDCO, the Commission approves post-facto the aforesaid PPA executed on 14.08.2009 between GRIDCO Ltd. and PTC India Ltd. for procurement of Odisha's share of power from Chukha Hydro Electric Project, Bhutan. However, the PPA is now approved till 31st March 2027 and GRIDCO Ltd. is directed to submit the PPA for subsequent period of approval before the said date for consideration of the Commission.

GRIDCO Ltd. is further directed to work out with PTC India Ltd. for any possibility of introduction of clause relating to termination of agreement in the succeeding PPA.

11. The case is accordingly disposed of.

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

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson