

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. 11 OF 2024

M/s. NAVA Ltd.	Petitioner
Vrs.		
M/s. GRIDCO Ltd	Respondent

In the matter of: An application filed by NAVA Limited (formerly Nava Bharat Ventures Limited) under Section 86(1)(f) of Electricity Act, 2003 to adjudicate the matter of dispute between GRIDCO regarding delay in releasing the outstanding payment of NAVA Limited towards supply of electricity to GRIDCO from March 2022 onwards along with applicable Delayed Payment Surcharge.

For Petitioner: Shri Bibhu Charan Swain, Authorized Representative on behalf of NAVA Ltd.

Respondent: Ms. Sasmita Mohanty, DGM (Electrical) and Ms. Pragnya Punam Dash, AGM(PP) on behalf of GRIDCO Ltd.

ORDER

Date of hearing: 23.07.2024

Date of Order: 02.09.2024

The Petitioner, M/s. NAVA Limited (NAVA) is a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Hyderabad, Telangana and having plant site at Kharagprasad Village, Dhenkanal District, Odisha. The Petitioner, M/s NAVA Ltd. has filed an application under Section 86(1)(f) of Electricity Act, 2003 to adjudicate the matter of dispute between GRIDCO and NAVA Limited.

2. The Petitioner has prayed to:

- i) Adjudicate the matter of dispute between GRIDCO and NAVA regarding delay in releasing the outstanding payment of Rs. 12,94,18,814/- to NAVA towards supply of electricity to GRIDCO from March 2022 to November 2023 onwards and direct GRIDCO to release the said amount to NAVA along with Late Payment Surcharge to totaling to Rs. 15,18,17,111/- and direct GRIDCO to release all future payments as per the terms of PPA.

- ii) Direct GRIDCO to release the pending payments along with Late Payment Surcharge to NAVA on urgent basis for survival of the industry & manpower as otherwise the operation of the plant will be affected due to cash flow problem and insufficient capital.
- iii) Direct GRIDCO to make payment of 75% of the disputed bill till the matter is settled and dispute is resolved.
- iv) Direct GRIDCO to release the payment towards supply of infirm power by NBVL-IPP along with Late Payment Surcharge.
- v) Direct GRIDCO to issue a fresh LC for an amount considering previous 12 months billing as stipulated in the PPA.

Submissions of the Petitioner:

3. The submission of Petitioner (NAVA) in support of their prayer are primarily as under:
 - a) The Petitioner has two captive power plants of 90 MW (1x30 MW + 1x60 MW) capacity. Thereafter, the State Government had allowed it to set up an IPP of 2x64 MW capacity as per the State Thermal Policy guidelines dated 08.08.2008. Accordingly, the Petitioner had entered into Power Purchase Agreement (PPA) with GRIDCO on 04.01.2011 to sell 12% of power towards state share at variable cost. Further, State Government on 15.10.2014 again directed GRIDCO to sign another PPA with the NAVA in respect of 1x64 MW thermal power plant as per the latest thermal policy of the State Government treating the unit as an IPP. Accordingly, a revised PPA was entered into on 31.10.2014 between GRIDCO and NAVA.
 - b) Basing on the Maximum Continuous Rating (MCR) test of the IPP unit, the petitioner, on 23.12.2014, requested the State Government to revise the installed capacity of the IPP from 64 MW to 60 MW. Accordingly, the Additional Secretary to Government, Department of Energy, vide his Letter dated 03.08.2015, had directed GRIDCO to amend the PPA dated 31.10.2014 considering the installed capacity of the IPP power plant as 60 MW instead of 64 MW. Accordingly, a supplementary PPA was executed between GRIDCO and NAVA on 23.09.2015 accepting the capacity of the IPP unit as 60 MW.
 - c) The Commission, vide its order dated 26.11.2015 passed in Case No. 78/2014, had approved the aforesaid revised PPA dated 31.10.2014 and Supplementary PPA dated 23.09.2015 and had directed the petitioner to file the application for determination of Tariff for the State share of power to be purchased by GRIDCO from the 1x60 MW IPP of NAVA.

- d) The Petitioner had filed a petition for fixation of tariff of its 60 MW IPP for selling power to GRIDCO as state share of power @12% Energy Sent Out (ESO). The Commission had heard the matter and after analyzing the data submitted by both the parties the Commission had passed an order for providing a methodology for calculation of the monthly Energy Charge Rate (ECR) to be billed by NAVA towards supply of 12% of Energy Sent Out to GRIDCO vide its order dated 12.01.2022 in Case No. 44 of 2021. The abstract of the order dated 12.01.2022 of the Commission is furnished as under:

“Energy /Variable Charge

65. The energy charge is to be calculated and billed by the generator on month to month basis as per Regulations 27(8), (9) & (10) of the OERC generation Tariff Regulations, 2020. Regulation 27(10) & (11) of the OERC Generation Tariff Regulations, 2020 provides that the Energy Charge Rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the formulae as under: For Coal based Fired Stations: ECR can be calculated as follows as per the OERC Generation Tariff Regulations, 2020:

(11) For coal based fired stations

$$ECR = \{(SHR - SFC \times CVSF) \times LPPF / CVPF + SFC \times LPSFi + LC \times LPL\} \times 100 / (100 - AUX)$$

Where,

AUX = Normative auxiliary energy consumption in percentage;

CVPF = Weighted average Gross calorific value of coal “as received” in kCal

per kg for coal based stations;

CVSF = Calorific value of secondary fuel, in Kcal per ml;

ECR = Energy charge rate in Rupees per kWh sent out;

SHR = Gross station heat rate in Kcal per kWh;

LC = Normative limestone consumption in Kg per kWh;

LPL = Weighted average landed price of limestone in Rupees per kg;

SFC = Normative Specific fuel oil consumption in ml per kWh;

LPPF = Weighted average landed price of primary fuel in Rupees per kg per liter or per standard cubic meter, as applicable, during the month. (In case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio) ;

LPSFi = Weighted average Landed price of Secondary Fuel in Rs/ml during the month

Provided that generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, etc., as per the Format prescribed by the Commission.

Provided further that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels as received shall also be provided separately, along with the bills of the respective month:

66. Considering the above provisions of the OERC Generation Tariff Regulations, 2020, the Commission directed that the petitioner-NBVL would furnish

the information/ data to GRIDCO as regards to details of coal and oil with break-up as stated in the Regulations. From the submission of NBVL it is understood that they are using e-auction/ imported coal for operation of its power station. GRIDCO has to verify the details of coal purchased and consumed as well as GCV of the same. However, as an illustration the Commission has calculated the energy charge rate as under basing on the weighted average price & GCV of both Coal and fuel oil as considered by GRIDCO in its submission.

Parameters	Unit	Submitted by NBVL	Submitted by GRIDCO	Calculated by Commission
<i>Auxiliary Energy Consumption</i>	%	10.00	8.5	10.00
<i>Station Heat Rate</i>	Kcal/kwh	2800.00	2386.65	2800.00
<i>GCV of Coal</i>	Kcal/Kg	3156.90	3448.16	3448.16*
<i>Coal Price</i>	Rs/Mt	2457.29	2211.03	2211.03*
<i>Limestone Price</i>	Rs/Mt	3465.00	0	3465.00*
<i>Sp. Lime Stone Consumption</i>	Kg/kwh	0.025	0	0.025
<i>Sp. Oil Consumption</i>	ml/kwh	0.5	0.5	0.50
Energy Charge Rate (ECR) P/U	Paise/kwh	251.79	167.25	209.11

**To be verified and ascertained by GRIDCO before payment.*

67. The above computation of ECR was only for the purpose of illustration. The billing of ECR shall be made by NBVL and submitted to GRIDCO on monthly basis with the details of coal/oil used for generation as per the OERC Generation Tariff Regulation, 2020 and the parameters decided by the Hon'ble Commission. GRIDCO shall verify GCV and price of coal and oil etc. before making actual payment as per Regulations."

- e) Accordingly, as per the ECR calculation methodology provided by the Commission, the Petitioner had been raising the monthly bills starting from March 2022 to November 2023 amounting of Rs. 24,37,73,618/- for supplying 12% ESO power (around 73738125 kWh of energy) to GRIDCO. However, GRIDCO released only part payment of Rs. 14,40,16,282/- basing on the provisional Energy Charge Rate (ECR) of Rs.1.953 per kWh instead of releasing the payment at the calculated ECR based on the methodology approved by the Commission in its order dated 12.01.2022 in Case No 44/2021. Till 31.03.2023, GRIDCO has only released Rs. 14,40,16,282/- to NAVA and a huge amount of Rs. 9,97,57,336/- is outstanding with GRIDCO towards supply of energy. Therefore, the Petitioner has filed the present petition before this Commission for adjudicating the matter of dispute between GRIDCO and NAVA regarding delay in releasing the outstanding payment of the Petitioner Company under section 86(1)(f) of the Electricity Act, 2003 and has prayed for issuance of necessary direction to GRIDCO for release outstanding payment along with applicable Delayed Payment Surcharge and release of all the part and future payment March 2022 onwards on the basis of Commission's order dated 12.01.2022 in Case No. 44/2021

- f) The Petitioner further submitted that, in accordance with the provisions of PPA, it has raised the bills of Rs. 2,96,61,478/- towards supply of infirm power during the months of February-2013, March-2013 & December 2014. However, instead of releasing the payment towards infirm power, GRIDCO returned the said bills to the Petitioner stating that OERC was yet to determine the tariff of the said plant. The Petitioner further submits that GRIDCO could have made payments on provisional basis as per variable Energy Charge Rate. Therefore, the Petitioner prays the Commission to direct GRIDCO to release the payment of Rs. 2,96,61,478/- towards supply of infirm power along with Late Payment Surcharge.
 - g) Further, considering the clause 7.3.2 of the PPA executed between GRIDCO & NAVA, the Petitioner has claimed Rs. 2,23,98,297/- towards Late payment surcharges (LPS) till 31.12.2023 on the energy bills raised by NAVA for the period from March 2022 to November 2023 which remained unpaid by GRIDCO beyond the due date i.e. 60 days from the date of presentation of bills.
 - h) Further, as per the clause 7.3.3 of the revised PPA between the Parties, GRIDCO is obligated to ensure that the LC remains valid at all times during the entire or extended validity of the Agreement. Instead of that, a weekly revolving LC has been opened by GRIDCO in favour of NAVA. In absence of a valid LC, it not only contravenes the contractual obligations but also jeopardizes the smooth functioning of the power supply arrangement.
4. In response to the above prayer of the Petitioner, the Respondent, GRIDCO Ltd. in its counter reply has prayed before the Commission as under:
 - a) Adjudicate the matter and direct appropriate principle and procedure for computation of actual monthly ECR in respect of the Petitioner to be followed by both the parties;
 - b) Direct the Petitioner to submit the correct monthly energy bills to the Respondent GRIDCO with all supporting documents (i.e. Form-15, genuine Third Party GCV Sampling Report and any other relevant documents).
 5. During continuance of proceeding before the Commission, the Commission in its interim Order dated 28.05.2024 has directed as under:

“3. Upon hearing the parties and considering the nature of dispute between the Petitioner-M/s. NAVA Ltd. and the Respondent-M/s. GRIDCO Ltd. in the present case we advise both the parties to sit with the Director of Engineering of this Commission for mutual resolution/conciliation of the disputes. Accordingly, we direct both the parties to sit with the Director of Engineering, OERC on a suitable date during the week commencing from 24th June, 2024 and 29th June, 2024 and place their views/pleadings on the disputed issues pertaining to the present case. The Director of

Engineering, OERC shall explore the possibility of settlement of the disputes on mutual consent of the rival sides. Both the sides shall also make endeavor to arrive at a mutual settlement concerning the issues raised by them in the present proceeding. Director of Engineering, OERC shall submit a report regarding the outcome of the settlement process before the Commission within 2nd week of July, 2024.”

6. In response to the above direction of the Commission, Director (Engineering) of the Commission had conducted two meeting on 24.06.2024 & 10.07.2024 with both parties to deliberate and for mutual resolution/ conciliation of four major disputes namely:
- a) Determination of GCV and calculation of ECR to arrive at the outstanding payment to be made by GRIDCO to NAVA Ltd. for the period from March 2022 to May 2024.
 - b) Payment of cost of Infirm Power for three months (i.e. February 2013, March 2013 and December 2014).
 - c) Payment of Late Payment Surcharge.
 - d) Issuance of a fresh LC considering billing of previous 12 months in line with the PPA.
7. Thereafter, the Director (Engineering) has submitted his report before the Commission on 18.07.2024 regarding the outcome of the settlement process between both parties and the Commission, vide its letter dated 18.07.2024, has circulated the said report among the parties. The item wise observations of the Director (Engineering) on above four (4) issues are depicted below:

i. Issue No. 1: Determination of GCV and calculation of ECR to arrive at the outstanding payment to be made by GRIDCO to NAVA Ltd. for the period from March 2022 to May 2024.

The Commission vide order dated 12.01.2022 in Case No. 44/2021, approved computation of ECR with the followings:

“The above computation of ECR(209 Paise/KWh) is only for the purpose of illustration. The billing of ECR shall be made by M/s. NAVA and submitted to GRIDCO on monthly basis with the details of coal/oil used for generation as per the OERC Generation Tariff Regulation, 2020 and the parameters decided by the Commission in that order. GRIDCO shall verify GCV and price of coal and oil etc. before making actual payment as per Regulations.

However, the Commission is of the view that the entire share of State from the subject IPP should be drawn by GRIDCO. Further, the Commission is of the view that domestic coal should be utilized for generation of power for State use to avoid tariff burden on the State consumers. Therefore, the Commission directs both GRIDCO and the petitioner to discuss the matter at appropriate level to obtain domestic coal under different policies of the Central/State Govt. towards state share of power from the subject 60 MW IPP of M/s. NBVL.”

Accordingly, M/s. NAVA submitted the bills of ECR from March 2022 to GRIDCO on monthly basis with the details of coal/oil used for generation and release of payment. However, GRIDCO was not satisfied with the actual GCV of coal and landed cost of coal consumed by the petitioner and raised their concern to the petitioner. A physical meeting was held between M/s. NAVA and GRIDCO on 29.10.2022 on the said issues,

but the record notes of discussion submitted by GRIDCO was not confirmed by the petitioner. Therefore, the respondent could not proceed further for computation of ECR as deliberated in the meeting and continues to pay at provisional ECR of 199.5 Paise/KWh to M/s NAVA on the basis of illustrated ECR calculated by OERC (i.e. 209 Paise/KWh less cost of lime stone not used by IPP).

During the meeting held on dt.24.06.2024, both M/s NAVA and GRIDCO submitted their respective views and after mutual resolution, both the parties have agreed to calculate the ECR by considering the median value of the range of GCV of domestic coal as mentioned in the respective MCL invoices (billed GCV) of domestic coal procured from different sources and allowing an adjustment for total moisture as per the formula given at Regulation 3(ff) of OERC Generation Tariff Regulation, 2020. Accordingly, M/s NAVA Limited shared the revised ECR to GRIDCO Ltd on dt.27.06.2024 where the outstanding differential energy charges amounting to Rs.5,86,85,390/- (for the period from March 2022 to May 2024) was arrived. GRIDCO has also confirmed the outstanding differential energy charges amounting to Rs.4,97,79,710/- after factoring provisionally accepted amount for payment to be made against May 2024 bill of Rs.89,05,680/- (Rs.5,86,85,390.00 – Rs.4,97,79,710.00). GRIDCO further submitted in the 2nd meeting dated 10.07.2024 that the bill for the month of May 2024 (i.e. Rs.89,05,680/-) will be paid by 18.07.2024 after availing 1% rebate.

Considering the above mutually agreed decision by both the parties, the Commission may pass the final order on payment of outstanding ECR charges by GRIDCO to NAVA Ltd. for the period from March 2022 to May 2024.

ii. Issue No. 2: Payment of cost of Infirm Power for three months (i.e. February 2013, March 2013 and December 2014).

As per Revised Power Purchase Agreement: dated 31.10.2014.

“Infirm Power” shall mean electricity injected into the grid prior to commercial operation of a unit of a Generating Station.

7.1.3 GRIDCO shall be entitled to further receive the entire infirm power, sent out from the Generating Unit(s) of the Thermal Generating Station at Variable Cost/ Energy Charge Rate which shall be determined by OERC.

7.1.4 Till determination tariff by the OERC, payment shall be made for the drawal of Contracted Energy & Infirm power provisionally as per the provisional variable cost/ Energy Charge Rate of respective year as approved in the ARR Order of GRIDCO by OERC for the IPPs supplying power to GRIDCO. On determination tariff, the same shall be adjusted against the approved tariff accordingly.”

M/s NAVA has submitted that they have supplied infirm power to GRIDCO in the month of February 2013, March 2013 and December 2014 from the 1x60MW IPP. They had submitted bills to GRIDCO for all the above period vide letter dated 08.03.2013, 08.04.2013 and 09.01.2015. However, GRIDCO has not made any payment to NAVA till date towards supply of infirm power.

GRIDCO has submitted that they have returned the infirm power energy bill for the month of Dec,2014 (which was the only infirm bill available with GRIDCO) raised on dated 12.01.2015 and informed to submit the bill only after finalization of variable cost based on linkage coal only by OERC. Further, GRIDCO has submitted that in absence of appropriate ECR based on linkage coal only pertaining to said period and as per the letter of GRIDCO dated 11.12.2014, the infirm power so injected is to be construed as free power and therefore it is humbly submitted that the Respondent GRIDCO is not inclined to make any payment in this regard, as the petitioner did not act as per agreed terms of the approved PPA.

During the meeting held on 24.06.2024, GRIDCO submitted that they may consider to make payment of infirm power based on landed cost and GCV of linkage coal effective in those months i.e. Feb, 2013, March, 2013 and Dec, 2014 respectively. In response to the above views of GRIDCO, M/s. NAVA Ltd. had submitted that they would submit the calculation of ECR related to infirm power for further verification and views of GRIDCO. M/s. NAVA Ltd. had submitted the calculation of ECR at the rate of Rs.3.189 considering the coal cost of Auction Coal and Median Value of GCV of November 2011 after applying Moisture Correction formula.

In the 2nd meeting held on dt.10.07.2024, GRIDCO submitted that they stand by their views submitted on 24.06.2024 and may consider to pay ECR of TTPS effective for the month Feb, 2013, March,2013 and Dec,2014 and make payment to M/s. NAVA Ltd. Alternatively, GRIDCO proposed that the Commission may consider the rate of 145.97Paise/kWh, as approved by OERC in the ARR order for FY: 2016-17 of GRIDCO dated 21.03.2016 in Case No.54 of 2015, for M/s NAVA Ltd. (erstwhile M/s. NBVL) as the rate for the infirm power supplied during Feb, 2013, March, 2013 and Dec, 2014 respectively.

Since both parties did not arrive at a consensus on infirm power, the details available on linkage coal cost for the said period was sought by Director (Engineering). M/s. NAVA Ltd. stated that they are having a CGP which was supplied with linkage coal during the said period. Basing on the views of NAVA Ltd., the Director (Engineering) advised for calculation of the ECR based on the GCV and cost of said linkage coal for the month Feb, 2013, March,2013 and Dec,2014 of that CGPs with application of Moisture Formula. M/s. NAVA Ltd. submitted that they would submit the revised ECR for infirm power to GRIDCO by 12.07.2024. GRIDCO would share the views on the revised calculation of ECR for infirm power to M/s. NAVA Ltd by 15.07.2024. M/s NAVA has shared their calculation sheet to GRIDCO vide their letter no. NAVA/FIN/154/2024-25 dated 12.07.2024. However, the views of GRIDCO are yet to be received by OERC.

It may be noted that the supply of infirm power for the month of Feb, 2013, March,2013 are under the tariff control period of 2009 to 2014 and that during the month Dec,2014 is under the tariff control period of 2014 to 2019. The CERC (Terms and Conditions of Tariff) Regulations, 2009 and the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 was applicable during the Control Period from 2009-14 and from 2014-19 respectively.

As both the parties could not arrive at a mutually agreed decision, the Commission may take appropriate decision on Infirm Power for three months (i.e. February 2013, March 2013 and December 2014).

iii. Issue No. 3: Payment of Late Payment Surcharge.

Regarding Payment of Late Payment Surcharges, both parties submitted their views which are annexed to the M.O.M. dated 24.06.2024. As they could not arrive at a mutual resolution, the Commission may take suitable decision on adjudication of the said issue.

iv. Issue No. 4: Issuance of a fresh LC considering previous 12 months billing in line with the PPA.

Regarding Issuance of a fresh LC considering previous 12 months billing in line with the PPA, both parties submitted their views which are annexed to the M.O.M. dated 24.06.2024. As they could not arrive at a mutual resolution, the Commission may take suitable decision on adjudication of the said issue.”

8. Basing on the report submitted by Director (Engineering),the Commission heard the Petitioner (M/s NAVA) and the Respondent (M/s GRIDCO) relating to above four disputed

issues between M/s. NAVA Ltd and GRIDCO, at length on 23.07.2023 through hybrid mode. It is observed that out of four disputed issues, only one issue i.e. Determination of GCV and calculation of ECR to arrive at the outstanding amount to be paid by GRIDCO to M/s. NAVA Ltd. for the period from March, 2022 to May, 2024 has been mutually resolved and consensus could not be arrived at on the other three issues i.e. (a) Payment towards infirm power for three months (i.e. February, 2013, March, 2013 and December, 2014); (b) Payment of Late Payment Surcharge and (c) Issuance of a fresh LC considering billing of previous twelve months in line with the PPA. Accordingly, the Commission directed the petitioner to file their written note of submissions on the above unresolved issues, if any, serving a copy to the Respondent, GRIDCO and directed GRIDCO to file its response, if any.

9. In response to the directions of the Commission, the Respondent (GRIDCO) and the Petitioner (NAVA) have submitted their views on three unresolved issues on 03.08.2024 and 12.08.2024 respectively which are summarized as under:

(a) **Payment of cost of infirm power for three months (i.e. February, 2013, March, 2013 and December, 2014);**

GRIDCO has submitted that, it has verified the data and supporting documents provided by the petitioner, vide their letter dated 12.07.2024, in respect of GCV and landed cost of GCV of linkage coal and percentage (%) of IM, TM considered for arriving at the ECR of infirm power by NAVA. Further, basing on the principle agreed in Minutes of the Meeting dated 24.06.2024 (i.e., Mid value of GCV as per invoice of Coal of Feb-2013, Mar-2013 & Dec-14 and the average of IM% & TM% at the receiving end for the period March 2022 to May 2024), the Respondent (GRIDCO) has recalculated the ECR of infirm power which works out to Rs.1.587/kWh for the months of February 2013 & March 2013 and Rs.1.712/kWh for December 2014 as against the ECRs estimated by NAVA which are Rs.1.918/kWh, Rs.1.741/kWh and Rs.2.013/kWh for Feb-2013, Mar-2013 & Dec-14 respectively. GRIDCO has also prepared and submitted the comparative statement of infirm power mentioning the reasons of deviation in calculation of ECR of infirm power. Accordingly, GRIDCO has provisionally calculated Rs.1,32,10,653/- towards cost of infirm power for three months (i.e. February, 2013, March, 2013 and December, 2014).

M/s. NAVA Ltd in its reply submitted that, it has agreed with the calculation of infirm power submitted by GRIDCO and prayed before the Commission to direct

GRIDCO to release the payment of infirm power bills along with applicable Late Payment Surcharges.

(b) Payment of Late Payment Surcharge (LPS):

Regarding late payment surcharges, the Respondent - GRIDCO has submitted that, LPS is not payable by GRIDCO on incorrect claims by the Petitioner NAVA Ltd. towards energy charges and GRIDCO has consistently raised allegation on inflated monthly ECR claimed by the Petitioner, which could not be clarified satisfactorily. The Respondent-GRIDCO has further submitted that based on the direction of the Commission regarding the principle /procedure to be followed for calculation of GCV of coal and ECR, GRIDCO shall make differential payment, if any, within one month time on a mutual reconciliation. However, the Petitioner-NAVA Ltd. has submitted that all necessary documentation and clarifications have been provided to GRIDCO Ltd. and accordingly claimed LPS of Rs.2,05,20,463/- on ECR of firm and infirm power.

(c) Issuance of a fresh LC considering previous billing for twelve months in line with the PPA

Regarding the issuance of fresh LC, GRIDCO has submitted that in line with the letter dated 28.08.2020 of Ministry of Power, weekly revolving LC of required amount as per the PPA has been established in favor of NAVA Ltd. on 31.03.2024 and is valid from 01.04.2024 to 31.03.2025 as same practice has been followed by GRIDCO for all other generators. But NAVA Ltd. has requested the Commission to direct GRIDCO to issue a fresh LC for an amount considering previous billing for 12 months as stipulated in the PPA.

10. The Commission has considered the views & submissions of the Petitioner (M/s NAVA Ltd.), Respondent (M/s GRIDCO) and the Report of Director (Engineering), OERC. Accordingly, the observations and directions of the Commission on each of the disputed issues are as under:

i. Determination of GCV and calculation of ECR to arrive at the outstanding payment to be made by GRIDCO to NAVA Ltd.:

It is observed that both Petitioner (M/s NAVA Ltd.) and Respondent (M/s GRIDCO) have mutually agreed for payment of differential outstanding Energy charge of Rs.4,97,79,710/- towards supply of electricity by NAVA Ltd. to GRIDCO Ltd. from March 2022 to May 2024. Accordingly, the Commission approves the outstanding amount of Rs.4,97,79,710/- for the period from March 2022 to May 2024 and directs

NAVA Ltd. to submit the revised bills for the said amount to GRIDCO Ltd. The Commission further directs GRIDCO Ltd. to pay the bill of the above outstanding amount within a period of 30 days from the date of receipt of the said bills.

ii. Payment of cost of Infirm Power for three months (i.e. February 2013, March 2013 and December 2014):

The Commission observes that Respondent-GRIDCO has provisionally calculated the cost of infirm power for three months (i.e. February, 2013, March, 2013 and December, 2014) as Rs.1,32,10,653/- which was accepted by Petitioner - M/s NAVA Ltd. vide their submission dated 12.08.2024. Since both parties have agreed on the above amount towards cost of infirm power, the Commission approves the cost of infirm power of Rs.1,32,10,653/- for three months (i.e. February, 2013, March, 2013 and December, 2014) supplied by M/s NAVA Ltd. to GRIDCO Ltd. The Commission directs NAVA Ltd. to submit the revised bills for the said amount to GRIDCO Ltd. and GRIDCO Ltd. is directed to pay the cost of infirm power based on bills raised by M/s NAVA Ltd. for the above months within a period of 30 days from the date of receipt of the revised bills. In case GRIDCO fails to pay the amount within the aforesaid period, Late Payment Surcharge, as prescribed in the PPA shall also be payable by GRIDCO Ltd.

iii. Payment of Late Payment Surcharge:

The Commission observes that as per the provision in Clause 7.3.2 of the PPA, LPS calculated at the rate of 1.5% per month on the amount of the bills remaining unpaid shall be payable for the actual period of delay beyond the due date of payment i.e., 60 days from the date following the date of presentation of the bill by NAVA Ltd. to GRIDCO and duly acknowledged by GRIDCO towards receipt of such bills. The rate/percentage of rebate and late payment surcharge shall be in line with the OERC/CERC guidelines, as amended from time to time. Moreover, as per provision in Clause 7.5 of the PPA regarding settlement of disputes, it is stated that all differences or disputes between the parties arising out of or in connection with the PPA shall be mutually discussed and resolved within 90 days, failing which the dispute shall be referred to OERC for adjudication as per Clause 10 of PPA.

Considering the above provisions in the PPA, it is understood that neither the Parties have discussed & resolved the bill dispute within 90 days from the date of dispute of the first bill (i.e. date on which the bill for the month of March 2022 was raised) nor have approached the Commission after 90 days of the first dispute. It is

observed that the Petitioner has raised the issue before the Commission in the instant petition for the first time in February 2024. Therefore, the Commission is of the view that Late Payment Surcharge for the bills raised up to 90 days from the date of dispute of the first bill (i.e. date on which the bill for the month of March 2022 was raised) shall be paid by GRIDCO to NAVA Ltd. Accordingly, the Commission directs NAVA Ltd. to claim Late Payment Surcharge on the bills raised up to 90 days from the date on which the first disputed bill was raised (i.e., the bill for the month of March 2022) to GRIDCO Ltd. in accordance with the provision in Clause 7.3.2 of the PPA. However, the LPS shall be calculated on the outstanding amount considering the revised bills as per this Order pertaining to the aforesaid period of 90 days. Further, GRIDCO Ltd. is directed to pay the LPS amount within 30 days of submission of such bill by the Petitioner.

Further, in case GRIDCO fails to pay the outstanding amount of Rs.4,97,79,710/- for the period from March 2022 to May 2024 within a period of 30 days from the date of receipt of the revised bills as stated in Para 10(i) above, Late Payment Surcharge, as prescribed in the PPA, shall also be payable by GRIDCO Ltd. for the period from date of disposal of this Order till the date of actual payment in addition to the Late Payment Surcharge for 90 days as mentioned above.

iv. Issuance of a fresh LC considering previous 12 months billing in line with the PPA

The Commission observes that both the parties are bound by the Provision of Clause 7.3.3 of the PPA regarding issuance of LC. Any modification/ change in the terms and conditions of the PPA dated 31.10.2014 can only be made with the mutual consent of both the parties after bringing amendment to the existing PPA. Therefore, the Commission directs GRIDCO Ltd. to issue fresh LC to NAVA Ltd. as per provision of Clause 7.3.3 of the PPA and also directs both the parties to honor the provisions of PPA in respect of LC in letter & spirit.

11. The case is accordingly disposed of with the observations stated above.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson