

**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. 64 of 2024

M/s. GRIDCO Ltd.	Petitioner
Vrs.		
M/s. JSW Energy (Utkal) Ltd. & Others	Respondent

In the matter of: An application of GRIDCO Ltd. under Section 86 of the Electricity Act, 2003 read with Section 21 of the Orissa Electricity Reform Act, 1995 and other enabling provisions seeking approval of the Commission to the Power Purchase Agreement dated 04.11.2011 and the Supplementary PPA dated 07.06.2017 executed between GRIDCO Ltd. and erstwhile M/s. Ind Barath Energy (Utkal) Ltd. Independent Power Plant (IPP) for procurement of power as per the MOU dated 07.02.2009, 03.01.2011, 28.01.2014 and the Supplemental MOU dated 24.11.2023.

For Petitioner: Ms. Susmita Mohanty, DGM (Electrical), GRIDCO.

Respondent: Shri Aman Anand, Learned Advocate along with Shri Nikhilesh Barik, Learned Advocate on behalf of the Respondent- M/s JSW Energy (Utkal) Ltd., Ms. Sonali Patnaik, Manager (Legal), Department of Energy, Government of Odisha, Shri Subhasis Samantray, RTPC, OPTCL, Shri K.C.Nanda, GM (RA & Strategy), TPWODL, Shri Bharat Bhadawat, (Chief Regulatory Affairs), TPCODL, Ms. Malancha Ghose, DGM (RA), TPNODL, Shri Soumitry Dey, TPSODL.

ORDER

Date of hearing: 12.11.2024

Date of Order: 08.01.2025

The Petitioner-M/s. GRIDCO Ltd. has filed the present application under Section 86 of the Electricity Act, 2003 read with Section 21 of the Orissa Electricity Reform Act, 1995 and other enabling provisions seeking approval of the Commission to the Power Purchase Agreement (PPA) dated 04.11.2011 and Supplementary PPA dated 07.06.2017 executed between GRIDCO Ltd. and M/s. Ind Barath Energy (Utkal) Ltd.- IBEUL (presently taken over by M/s. JSW Energy (Utkal) Ltd.- JSWEUL) for procurement of firm power from the Independent Power Plant (IPP), erstwhile M/s. IBEUL (now M/s. JSWEUL) as per the Memorandum of Understanding (MOU) dated 07.02.2009, 03.01.2011, 28.01.2014 and Supplemental MOU dated 24.11.2023.

2. The Petitioner in its initial Petition has prayed to:
 - i) Approve the already executed Revised PPA dated 04.01.2011 and Supplemental PPA dated 07.06.2017 executed between GRIDCO and erstwhile M/s. IBEUL.
 - ii) Allow 8 weeks' time to finalize the draft amended/ supplemental PPA to be executed between GRIDCO and M/s. JSWEUL and file the same for necessary statutory approval by the Commission before signing.
3. The Background of the Case is as given hereunder:
 - a) The Principal MOU was executed between the Government of Odisha and M/s. IBEUL on 07.02.2009 for setting up a thermal power plant of capacity 700 MW (2X350 MW) by M/s. IBEUL at Jharsuguda, Odisha. Accordingly, principal PPA was executed between M/s. GRIDCO and M/s. IBEUL on 14.09.2009.
 - b) The 1st Supplemental MOU was executed between the Government of Odisha and the IBEUL on 03.01.2011 for enhancement of installed capacity from 700 MW to 1360 MW with addition of another 660 MW unit. In line with the 1st Supplemental MOU, a revised PPA was executed between IBEUL and GRIDCO on 04.01.2011 wherein entitlement of power of GRIDCO (i.e. 14% of energy sent out if coal block is allocated within the State of Odisha at ECR or 12% of energy sent out if coal block is not allocated within the State of Odisha at ECR) was stipulated.
 - c) 2nd Supplemental MOU was executed between Government of Odisha and IBEUL on 28.01.2014 for extension of validity period of 1st supplementary MOU (expired on 02.01.2014) up to 27.01.2016. COD of the Unit-1 of the IBEUL was declared on 20.07.2016 for a de-rated capacity of 339.6 MW against the installed capacity of 350 MW.
 - d) The Commission, vide its Order dated 30.07.2016 passed in Case No. 21 of 2016, determined an indicative tariff (ECR) for supply of 12% state share of power in accordance with the OERC Generation Tariff Regulations, 2014. Since the matter of evacuation of state's share of power through CTU, as agreed by M/s. IBEUL, was not incorporated in the PPA, the Commission in the said Order dated 30.07.2016 had advised the parties to take steps for necessary changes in the PPA as well as MOU with Government of Odisha at the earliest and submit the same before the Commission for approval.
 - e) A supplementary PPA was executed between GRIDCO and IBEUL on 07.06.2017 incorporating the above directions of the Commission regarding evacuation of state's share of power.

- f) Pursuant to an application filed by the Bank of Baroda under Section 7 of the Insolvency and Bankruptcy Code, 2016, the NCLT Hyderabad Bench by its Order dated 29.08.2018 had ordered the commencement of the Corporate Insolvency Resolution Process (CIRP). M/s. JSW Energy Ltd. (JSWEL) has submitted its Resolution Plan under the CIRP. The NCLT, Hyderabad Bench has approved M/s. JSW Energy Ltd.'s Resolution Plan vide its Order dated 25.07.2022. Pursuant to the NCLT approval, the Resolution Plan has been implemented by the JSWEL on 28.12.2022 and accordingly IBEUL has become a subsidiary of JSWEL.
- g) Thereafter, a 3rd Supplemental MOU was executed between the Government of Odisha and M/s. IBEUL (presently a subsidiary of M/s. JSWEL) on 24.11.2023 for revalidation of acquisition of the IPP of M/s. IBEUL by M/s. JSWEL in pursuant to approval of NCLT. Now, the name of the IPP has been changed from M/s. Ind Barath Energy (Utkal) Ltd. to M/s. JSW Energy (Utkal) Ltd. with effect from 20.05.2024 i.e. from the date of certificate issued by the Ministry of Corporate Affairs, Government of India.
- h) Now in the instant case, M/s. GRIDCO Ltd. has filed the application with the prayers to approve the Revised PPA dated 04.01.2011 and the Supplemental PPA dated 07.06.2017 executed between GRIDCO and the erstwhile M/s. IBEUL, and to allow GRIDCO eight weeks' time to finalize the draft amended/ supplemental PPA to be executed between GRIDCO and M/s. JSWEUL and file the same for necessary approval of the Commission.
- i) GRIDCO, vide their letter dated 12.02.2024, had requested to commence supply of 12% of State's share as per executed PPA and MoU at provisional ECR of Rs.3.14/kWh. The supply of firm power to GRIDCO commenced with effect from 21.02.2024 and scheduling its being carried out by ERLDC.
- j) The Commission, vide its interim order dated 01.10.2024, had directed both M/s. GRIDCO and M/s. JSWEUL to discuss the issues of amendments in the PPA and submit a consolidated amended PPA before the Commission by 05.11.2024 for approval incorporating the issues mutually agreed upon and keeping in view the observations of the Commission in its order dated 30.07.2016 passed in Case No.21 of 2016. During the hearing on 12.11.2024, the Petitioner-GRIDCO had submitted that in pursuance of the above direction of the Commission, the issues have been resolved with M/s. JSWEUL after mutual discussion and prayed to allow them some time to submit the signed PPA for approval of the Commission. Accordingly, the Commission

in its interim order dated 12.11.2024 had directed M/s. GRIDCO Ltd. to submit the consolidated amended PPA signed by both the parties within two weeks.

4. Accordingly, on 30.12.2024, the Petitioner-M/s. GRIDCO Ltd. has filed the amended/restated PPA signed by both M/s. JSW Energy (Utkal) Limited and M/s. GRIDCO Ltd. on 23.12.2024 with the following submissions:
 - a) The draft amended PPA could not be signed within the stipulated time period due to discussions and finalization of appropriate provision for payment of compensation by the IPP in case of short/no supply of contracted energy to GRIDCO and incorporate the same in the amended PPA. Therefore, vide its second time petition dated 20.12.2024, GRIDCO had sought for further time upto 30.12.2024 for filing of the copy of signed amended/restated PPA.
 - b) In line with the observations of the Commission in its order dated 29.05.2024 pertaining to approval of PPA executed between M/s. JITPL (IPP) and M/s. GRIDCO Ltd., the compensation clause has been agreed upon and duly incorporated in the signed amended/restated PPA executed on 23.12.2024 between M/s. JSWEUL and GRIDCO Ltd.
 - c) In view of the above, the Petitioner-GRIDCO Ltd. has prayed before the Commission to approve the aforesaid signed amended/restated PPA dated 23.12.2024 executed between M/s. JSWEUL and GRIDCO Ltd.
5. In course of the hearing, the Representative of the Respondent-M/s. JSWEUL submitted that the disputed issues on amendment of the PPA has already been resolved between M/s. JSWEUL and GRIDCO Ltd. and the consolidated amended/restated PPA would be signed between the parties shortly and placed before the Commission for approval.
6. The other Respondents-OPTCL, GoO, SLDC, TPCODL, TPNODL, TPWODL & TPSODL have no objection to approval of the said PPA by the Commission considering the facts & circumstance of the Case.
7. Heard the parties through hybrid mode (physical & virtual mode) and considering the written note of submissions of the parties, the Commission observed that:
 - a) The GRIDCO Ltd. had executed PPA with the erstwhile M/s. IBEUL on 14.09.2009 based on the MOU dated 07.02.2009 for a capacity of 700 MW (2x350 MW) and subsequently supplemental MOU was executed between M/s. IBEUL and Government of Odisha on 03.01.2011 for setting up of 1360 MW (2x350 MW + 1x660 MW) thermal power plant. Accordingly, PPA was revised on 04.01.2011. Out of three (3) generating units, only the first unit was commissioned on 20.07.2016 with a de-rated capacity of

339.60 MW against the installed capacity of 350 MW. A supplementary PPA was executed between GRIDCO & M/s IBEUL on 07.06.2017 to include the alternate power evacuation system through CTU network.

- b) Pursuant to the order dated 29.08.2018 of the NCLT, Hyderabad Bench for commencement of Corporate Insolvency Resolution Process (CIRP), M/s. JSW Energy Ltd. had submitted its Resolution Plan under CIRP, which was approved by the NCLT vide order dated 25.07.2022. The said Resolution Plan of M/s. JSW Energy Ltd. has been implemented on 28.12.2022 and accordingly, M/s. IBEUL has become a subsidiary of M/s. JSW Energy Ltd. Thereafter, the name of M/s. Ind-Barath Energy (Utkal) Limited has been changed to M/s. JSW Energy (Utkal) Ltd. with effect from 20.05.2024 i.e. the date of issuance of certificate by the Ministry of Corporate Affairs, Govt. of India.
- c) In the meantime, M/s. Ind-Barath Energy (Utkal) Limited has entered into a Supplemental Deed of MoU with the Govt. of Odisha on 24.11.2023 for revalidation of acquisition of the subject IPP of M/s. IBEUL by M/s. JSW Energy Ltd. in pursuant to approval of NCLT.
- d) In the initial petition of the present case, GRIDCO had prayed for approval of the Revised PPA dated 04.01.2011 and Supplemental PPA dated 07.06.2017 executed between GRIDCO and erstwhile M/s. IBEUL and to allow eight weeks' time to finalize the draft amended/ supplementary PPA to be executed between GRIDCO and M/s. JSWEUL and had filed the same for approval of the Commission before signing. However, pursuant to the interim orders dated 01.10.2024 and 12.11.2024 of this Commission, M/s. GRIDCO Ltd. has filed the consolidated amended/re-stated PPA signed on 23.12.2024 between M/s. JSW Energy (Utkal) Ltd. and M/s. GRIDCO Ltd. for approval of the Commission.
- e) M/s JSWEUL is now supplying 12% share of the State of Odisha from Unit #1 of its power plant since 21.02.2024 based on the request from GRIDCO, vide their letter dated 12.02.2024.
- f) For delivery of State's share of power, M/s JSWEUL has to construct dedicated transmission infrastructure from its generating station to the designated Grid Sub-station of OPTCL/STU at their cost or use CTU network temporarily bearing all ISTS charges & losses till the connectivity with STU network is established.

- g) State's share of power shall be met first from the SHAKTI Coal. In the event of short supply/ non-availability of SHAKTI coal, commercially cheaper/domestic/alternate source of coal shall be used as per amended/restated PPA.
 - h) M/s JSWEUL is liable to pay compensation as per amended/restated PPA for short/non-supply of contracted capacity.
 - i) The need of thermal power in meeting the peak demand and energy requirements of the State cannot be ruled out in the near future even during large scale integration of generation from Renewable sources. During the surplus scenario and favourable market conditions, such power can be sold by GRIDCO in the power market and benefits thereof can be passed on to the ultimate consumer and reliability of power supply can be ensured under exigency conditions like outage of 660/800 MW thermal generating units(s).
 - j) The Respondents-Government of Odisha, M/s. OPTCL, M/s. SLDC, M/s. TPCODL, M/s. TPNODL, M/s. TPWODL and M/s. TPSODL have no objection to approval of said amended/restated PPA.
8. The salient features of the aforesaid consolidated amended/restated PPA dated 23.12.2024 signed by both the parties, M/s. JSWEUL and M/s. GRIDCO Ltd. are as under:
- a) GRIDCO shall have the right on behalf of the Government of Odisha to receive 14% of the energy sent out from the Generating Station(s)/Thermal Power Station at Energy Charge Rate (ECR), if coal block(s) is allocated within the State of Odisha. If coal block is not allocated within the State, GRIDCO shall have the right to purchase 12% of the energy sent out from the Generating station at ECR. The ECR shall be determined by the appropriate Commission.
 - b) M/s. JSWEUL shall apply for SHAKTI Coal to the appropriate authority as per the SHAKTI Policy for supply of power under the agreement, for which GRIDCO shall provide necessary support. GRIDCO's share of power shall be met first from the SHAKTI Coal if procured by JSWEUL from coal supplier as per the PPA. The ECR shall be calculated based on landed fuel cost and GCV on "As received basis" of SHAKTI Coal. In the event SHAKTI Coal falls short, the balance quantum of power shall be supplied from commercially cheaper/ domestic sources of coal. In case of non-availability of SHAKTI Coal linkage based on the agreement, both M/s. JSWEUL and GRIDCO may consider to mutually agree on the price and alternative sources of coal for commencement of supply of power.

- c) The State's share of power shall be made available to GRIDCO by M/s. JSWEUL at the bus-bar of OPTCL/STU's nearest EHV Grid Sub-station. M/s. JSWEUL would need to bear the cost of (i) dedicated transmission line from their generating plant to the designated Grid sub-station of the STU at available voltage level; (ii) interfacing arrangements at both the ends including works at the Grid sub-station, cost of Bays, etc.; and (iii) replacement/ up-gradation/ augmentation of existing equipment/ transmission system(s) of STU, if any. Till establishment of connectivity with STU, through dedicated transmission line M/s. JSWEUL shall supply the State's share of power using the transmission system of CTU and for such delivery of power, M/s. JSWEUL shall bear all necessary Inter-State transmission charges, transmission losses and any other charges as applicable upto the delivery point.
- d) The charges payable by GRIDCO to the JSWEUL, shall be restricted to Energy Charge Rate (ECR), corresponding to Contracted Energy and/ or Infirm Power.
- e) In case M/s. JSWEUL fails to supply/ short supplies Contracted Energy under this PPA to GRIDCO, then M/s. JSWEUL shall be liable to make payment of compensation for such non supply/ short supply of energy at ECR of the Central Thermal Generating Station approved by OERC for power purchase of GRIDCO and such ECR should be the next higher ECR for coal (with reference to the ECR of power of M/s. JSWEUL for the month) in the merit order dispatch for that year. Amount due towards such compensation in a month (if any) shall be adjusted from the cost of power payable by GRIDCO to M/s. JSWEUL for the said month. M/s. JSWEUL shall not be liable to pay the liquidated damages/ compensation, if such non supply/ short supply of Contracted Energy caused due to reasons solely attributable to GRIDCO.
- f) Scheduling, metering & energy accounting shall be in accordance with IEGC/CEA Regulations/Odisha Grid Code as amended from time to time.
- g) The LC shall cover 105% of the one-month's billing amount provisionally accepted by GRIDCO in respect of power supplied from the Generating Station/Thermal Power Station to GRIDCO. GRIDCO may open LC for a shorter duration say for supply corresponding to one week or fortnight as per extant Government of India Notification/ Rules/ Orders/ Appropriate Commission's Regulations from time to time, if any. The LC shall be established for a minimum validity period of one year.
- h) The rebate of 2% is allowed on payment of bill through LC or directly on the amount paid within 7 working days of presentation of the bills and rebate of 1% for payment

afterwards upto 30 days of presentation of bill. A surcharge @1.25% per month is to be paid on unpaid billed amount for the period of delay beyond due date of payment.

- i) The subject PPA shall come into force with effect from the date of commencement of power supply to GRIDCO i.e. 21.02.2024 for all purposes & the intent and shall remain operative initially upto completion of 25 years from the date of commercial operation of the last unit of the generating station. The PPA can be extended beyond the same on mutually agreed terms and conditions.
 - j) This amended and restated PPA dated 23.12.2024 will supersede all the earlier PPAs i.e. the Principal PPA dated 14.09.2009, Revised PPA dated 04.01.2011 and the Supplementary PPA dated 07.06.2017 with effect from the date of signing of this agreement, subject to approval by the OERC.
9. The Commission finds that the subject amended/restated PPA dated 23.12.2024 executed between M/s. JSWEUL and M/s. GRIDCO Ltd., is a consolidated form of the existing PPAs (i.e. the Principal PPA dated 14.09.2009, Revised PPA dated 04.01.2011 and the Supplementary PPA dated 07.06.2017) executed earlier (between the erstwhile M/s. IBEUL-IPP and GRIDCO Ltd.), amendments on account of acquisition of M/s. IBEUL-IPP by M/s. JSW Energy Ltd. and incorporation of certain issues mutually agreed between the parties subsequently regarding the payment of compensation to GRIDCO for short supply/ no supply of contracted capacity and the payment security mechanism.
 10. In view of the above observations and considering the availability of power at ECR (i.e. at variable cost only) and need of thermal power to meet the peak demand as well as the base load/ energy requirements of the State in future, the Commission accords in-principle approval to the subject amended/restated PPA dated 23.12.2024 executed between M/s. JSWEUL and M/s. GRIDCO Ltd. to ensure energy security of the State and in the overall interest of the consumers at large.
 11. The Case is accordingly disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson