

Case Nos. 28-29/2010

Order No.1
04.05.2010

Sri J. K. Dash, Sr. GM (PP) and Sri A.C. Mallick, Director (Comm), GRIDCO, Sri L. Pangari, Advocate on behalf of M/s Aarati Steels Ltd., and Sri T. Das, Section Officer, DoE, GoO are present. Both the cases clubbed together as they are co-related in nature.

2. Heard the parties on question of admission.
3. Sri J.K. Dash, Sr. GM (PP), GRIDCO stated that M/s Aarati Steels Ltd. is setting up of thermal power plant of 500MW capacity at Ghantikhal, Cuttack with a proposed investment plan of about Rs.2065.00 crore. The Govt. of Orissa has executed MoU with M/s Aarti Steel Ltd. on 07.02.09. As per resolution dtd. 17.08.2006 of the Govt. GRIDCO has executed PPA with M/s Aarti Ltd. on 24.10.09 for procurement of power generated by it, as the State designated entity for execution of PPA with the developer. As per the terms and conditions of the said MoU and State Thermal Policy dated 08.08.2008, the State has entitlement of power from the proposed power plant as given below:
 - i) Infirm power will be made available at variable cost;
 - ii) A nominated agency is authorised by the Govt. of Orissa, namely GRIDCO has right to purchase 14% of power sent out from the thermal power plant at variable cost if coal blocks are allocated to the IPPs inside the State, otherwise it will provide 12% power at variable cost.
4. He also stated that the Power Purchase Agreement (PPA) has been executed with the Respondent No.1 incorporating the above entitlement of power from the thermal power plant with conditions like operation of the power station, wheeling of power, metering and energy accounting charges, billing and payment, payment security mechanism, settlement of disputes, arbitration and force majeure etc. GRIDCO has to procure 50MW out of 500MW (4x125MW) IPPs of the Respondent No.1 produced from one of its unit.
5. Sri Pangari, Advocate for the Respondent No.1 stated that GRIDCO has filed both the petitions for approval of PPA and determination of tariff for procurement of power from the proposed 500MW thermal power plant of

M/s Aarti Steel Ltd. As per the MoU executed between Respondent No.1 and Respondent No.2-DoE, GoO on 07.02.09 for setting up of a thermal power plant of about 500MW capacity at Ghantikhal, Cuttack which shall be implemented in two phases with 250MW capacity in each phase. The State is entitled to get 12% power from proposed plant at variable cost and tariff is to be determined by the Commission. The unit size and capacity, however, may undergo changes.

6. Sri Pangari also stated that in meantime Govt. of Orissa vide its letter dtd. 23.11.2009 has accorded IPPs status of its 50MW CPP capacity unit of the plant of Respondent No.1 and as per S.7of the Electricity Act, 2003 the Respondent No.1 company may establish a generating plant without obtaining a licence subject to complying with the technical standards relating to connectivity to the grid. Respondent No.1 has no dispute regarding supply of 12% of its power generated from its 50MW IPP unit for the State by GRIDCO but raised its objections that the Respondent No.1 has agreed to provide all the power generated from its 50MW IPP unit to GRIDCO. In this connection Respondent No.1 vide its letter dtd. 08.10.2009 had clearly stated that while 12% of power to be supplied to GRIDCO on variable cost/rates, rest of the power may also be given to GRIDCO on mutually agreed rates. He also stated that commissioning of the above mentioned 50MW capacity unit of Respondent No.1 has been completed and it is started injecting power to the grid since 5th March, 2010 and has been requesting GRIDCO to make payment for which GRIDCO has filed the petitions before the Commission for approval of PPA and for determination of tariff. However, as regards determination of tariff for 12% of the power is concerned, the proposal submitted by the GRIDCO is quite unreasonable, erroneous and not based on actual cost factors. GRIDCO has not taken into consideration the cost of coal which being procured through e-auction, higher level of auxiliary consumption because of the smaller size of the unit, plant load factor, higher level of heat rate etc.
7. The Commission during hearing raised a query whether the proposed IPP of 50MW has been separated from its parent Industrial Unit M/s Ararti

Steels Ltd having also its own CGP units, generating power, legally & financially. Whether it being a separate entity or not till to day; and if so, what is the name of the IPP company presently having 50MW generating set and proposing additional capacity of 500MW or more in two phases? The learned Counsel for the Respondent No.1 stated that the 50MW IPP unit is not legally separated and no assets has been transferred to the newly created IPP from its parent Industrial Units having CGP. Steps have been taken for creation of a separate entity. He prayed the Commission to determine the tariff for 12% of the 50MW power to be supplied to GRIDCO and GRIDCO may be directed to finalise the tariff for balance 88% of power negotiating with the Respondent No.1. Respondent No.1 vide its letter dtd. 31.03.2010 has intimated GRIDCO that it has injected 5.373MU to the State Grid through 132KV LILO S/s. He also prayed to direct GRIDCO to pay the provisional tariff at the rate equal to CGP price till the IPP tariff is fixed by the Commission.

8. The Commission desired to know that whether the IPP has taken up with DISCOMs concerned regarding its requirement of construction power and start-up power for commissioning its first unit of 50MW? What are the conditions of the implementation agreement when IPP started the construction of the project and since what date construction of the project has been started? Further, Commission wanted to know the date of synchronization of 50MW unit of IPP with the State Grid, and what is the present status of the unit; whether it is injecting infirm power to the State Grid or the unit has been declared commercially operated; and if so what is the date of CoD? The petitioner-GRIDCO informed that they will check up and answer the queries of the Commission shortly. RespondentNo.-1 replied that M/s Aarati Steels Ltd. the existing industry having its own CGP is the consumer of DISCOM. The proposed construction of 50MW power plant has been started as the extension of its CGP units; however, as per its request Govt. of Orissa on 23.11.2009 has accorded IPP status-a separate power company "M/s Aarti Steel Ltd.-IPP" (yet to be established) of its 50MW capacity unit; and accordingly the PPA was executed on 24.10.2009 with GRIDCO.

9. The Commission, then wanted to ascertain from GRIDCO that on signing the PPA with IPP company whether GRIDCO has taken note of the IPP company has been legally separated with its parent company having CGP and assets of the parent company and IPP has been duly separated or not? Whether metering arrangement of IPP company and parent industrial unit having CGP have been separated and the matter has been taken up with DISCOM for separately accounting for CGP injection of power to the State Grid and IPP's consumption of construction and start-up power from DISCOMs? The representative of GRIDCO has sought time to check up and respond. The Commission desires that the concerned DISCOMs be impleaded as party as one of the respondent.
10. The Respondent No.-1 has intimated that the IPP has since injected 5.373 Million Units of power to the State Grid through 132KV LILO S/s as on 31.03.2010; and presently the first 50MW unit is generating and injecting power on its stabilization period. Since, the IPP selling rate will be high as compared to CGP rate being paid by GRIDCO; GRIDCO may be advised to pay provisional tariff at the rate being equal to CGP rate till the tariff is fixed by the Commission. The representative of GRIDCO opined that one of the major reason for the State Govt. to accord the IPP status to the 50MW units on 5th Mar, 2010, as M/s Aarti Steels Ltd has intimated that with the expected generation from its 50MW unit alongwith the existing running CGP units, they will not be able to consume minimum 51% of the generation in its industrial unit to maintain CGP status. The same condition is also persisting now. M/s GRIDCO is not legally competent to waive off the minimum consumption obligation and therefore it will not be possible for GRIDCO treat the 50MW as CGP unit of the Industrial Unit, as on date, till such time IPP is legally and financially separated from the parent company.
11. The representative of Govt. has prayed that one month time may be allowed to file its reply.
12. After hearing the parties and perusal of the case records we admit the petition.

We further direct as under :

- i) GRIDCO and IPP may discuss regarding asset transfer between parent company to IPP for approval of Capital Cost for the tariff purpose of the 50MW capacity of M/s Aarti Steels Ltd.-IPP. The date of asset transfer and establishment of Independent Power Producer (IPP) may be intimated to the Commission for finalization of capital cost of IPP for the tariff purpose.
- ii) The metering arrangement of IPP be checked by the stake holders i.e, DISCOM, GRIDCO and IPP for independent metering of IPP injection/ drawl of construction or start-up power and the CGP injection/drawl of Industrial unit from DISCOM. The concerned DISCOM be impleaded as one of the respondent.
- iii) IPP may file the details of tariff calculation as per agreed capital cost and norms of tariff determination in the prescribed format. Director (Tariff) of the Commission may facilitate the process in forwarding the prescribed format to IPP company and GRIDCO.
- iv) A specific request of the present management of the IPP was made that they are incurring substantial expenditure on purchase of fuel and other consumables for generation of power and supplying to the State Grid in power deficit period, they require to be compensated for their effort pending the finalization of segregation of asset realization of capital expenditure for the tariff purpose of IPP and other formalities of establishing IPP. The petitioner, however, could not confirm the present status of the 50MW generating state and whether the unit has been declared commercially operated after due acceptance of test and stabilization of the unit, or whether the present generation is infirm power of the unit during its stabilization period. Considering the above we agree that as per the proceedings of the meeting held on 19.01.2010 under the chairmanship of Hon'ble Minister of Power, Govt. of Orissa, the IPP may inject the infirm power upto 50MW to the State Grid and GRIDCO may provisionally compensate the management of IPP as per its own provisional tariff calculation of

variable cost (subject to adjustment when final tariff is determine by the competent Commission) at 59.00 (fifty-nine) Paise /Kwh.

- v) GRIDCO and IPP, may agree on PPA whether GRIDCO is entitled for full power from 50MW, as claimed by them or GRIDCO is entitled only for 12% power and IPP may sell balance 88% power to any other party including parties of outside State. In the former case OERC shall be competent Commission for Intra-State power company and in the later case the IPP will be treated as Inter-State power company and CERC would be the competent Commission. The tariff application, then be filed accordingly.

13. Put up the matter after such compliance for hearing.

Sd/-
Member (M)

Sd/-
Member (B)