

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

IA No. 35 of 2014 in
Appeal no. 25 of 2014

Dated: 28th March, 2014

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

SESA Sterlite Limited ... Appellant (s)
Sesa Ghor 20 EDC Complex Patto
Panjim
Goa – 403 001

Versus

1. Odisha Electricity Regulatory Commission ... Respondent(s)
Bidyut Niyamak Bhavan, Unit – VII
Bhubaneswar – 751 012
2. GRIDCO Limited
Janpath
Bhubaneswar – 671 022

Counsel for Appellant(s) : Mr. Amit Kapur
Ms. Poonam Verma
Mr. Akshet Jain

Counsel for the Respondent(s): Mr. R.K. Mehta and
Ms. Ishita C. Das Gupta,
Ms Mansa Monga for R-2

Mr. G. Umapathi,
Mr. Rutwik Panda and
Ms. Priyabrat Sahu for R-1

ORDER

RAKESH NATH, TEHNICAL MEMBER

IA No. 35 of 2013 has been filed by SESA Sterlite Limited in Appeal no. 25 of 2014 seeking stay of the operation of the impugned order dated 12.6.2013 of the Orissa Electricity Regulatory Commission determining the tariff of the generating station of the Appellant.

2. According to the Applicant/Appellant the State Commission has denied them the legitimate expenditure under the various heads impacting their cash flows. GRIDCO, the Respondent no.2 had been paying the Appellant for supply of electricity provisionally at the rate of Rs. 2.43 per unit from

November, 2010 (COD of Unit of II) to 31.3.2011 and at the rate of Rs. 2.75 per unit from 1.4.2011 to May, 2013. However, pursuant to the directions of the State Commission in the impugned order to revise the bills retrospectively, GRIDCO has stopped paying the Appellant for the electricity supplied to them creating a cash crunch for the Applicant/Appellant. According to the Applicant/ Appellant, they will not able to sustain their operations as non-payment had adversely affected the financial and operational viability of their company. In view of the above, the Applicant/Appellant has prayed through this IA for stay of the operation of the impugned order and to maintain status quo as existed prior to issuance of the impugned order to ensure that GRIDCO (Respondent no.2) continues to pay them at the provisional rate of Rs. 2.75 per unit.

3. The Respondent no.2 vehemently opposed the stay of the impugned order stating that it would result in granting the main relief to the Appellant sought for in the Appeal.

4. We have heard Shri Amit Kapur, Learned Counsel for the Appellant and Shri R.K. Mehta, Learned Counsel for the Respondent no. 2 on the subject.

5. We feel that granting of stay of the operation of the impugned order would not be proper without hearing the parties on the merits of the case. In view of the objections raised by the Learned Counsel for the Respondent no.2 to the grant of stay of the impugned order, Shri Amit Kapur, Learned Counsel for the Appellant requested that in the interim period the impugned order of the State Commission may be implemented by the Respondent no.2 and payments

may be released to them for the energy supplied to the Respondent no.2 as per the impugned order of the State Commission.

6. Learned Counsel for the Respondent no.2 pointed out that they had paid excess amount to the Appellant in the past which was adjusted against the bills raised by the Appellant after the passing of the impugned order.

7. We directed both the parties to discuss the matter and come to us with the agreed position regarding payment of dues to the Appellant. Accordingly a meeting was held between the parties and the following position was submitted jointly before us.
 - A) There was agreement between the parties on the weighted average annual fixed cost for supply from the Appellant's power plant to GRIDCO

during November 2010 to December 2013 as per the impugned order dated 12.6.2013 as set out below.

SI No.	FY	Period	AFC (per Impugned Order 12-06-13 (Rs.Cr)	AFC for Unit #2 (Rs. Cr)	Weighted Average AFC (Rs.Cr)
1	2010-11	a.10/11/10 to 29/03/11	461.82	461.82	186.00
		b. 30/03/11 to 31/03/11	769.91	384.96	
2	2011-12	a. 01/04/11 to 18/08/11	782.51	391.26	385.00
		b. 19/08/11 to 31/03/12	1142.68	380.89	
3	2012-13	a. 01/04/12 to 25/04/12	1153.36	384.45	380.00
		b. 26/04/13 to 31/03/13	1519.38	379.85	
4	2013-14	01/04/13 to 31/12/13	1516.08	379.02	286.00
Total					1,237.00

- B) The area of divergence was with regard to the following
- i) Water Charges and Electricity Duty paid, and
 - ii) Fixed Charges computed on the basis of actual dispatch of 350 MW or 400 MW due to the grid constraint instead of the installed capacity of the unit of 600 MW.

- c) According to GRIDCO, the tariff would be Rs. 2.07 per unit based on nameplate capacity of 600 MW without accounting for Water Charges and Electricity Duty and without considering the transmission constraint for dispatch of power. On the other hand the Applicant/Appellant claimed a tariff of Rs. 2.50 per unit after adjusting Water Charges and Electricity and Duty and Fixed Charges computed on the dispatch of 350 MW in view of the transmission constraints. It is the case of the Applicant that the Fixed Charges should be computed on the basis of 350 MW or 400 MW and not 600 MW in terms of Regulation 21(2)(a) of the Central Commission's Tariff Regulations, 2009. Taking into account nameplate capacity of 600 MW of the power plant without considering the transmission constraint, GRIDCO has to recover Rs. 76 crores from the Applicant for the period

November 2010 to December, 2013. However if the evacuation capacity of the transmission system is considered as 400 MW/350 MW then the Appellant will have to recover from GRIDCO 104 crores/174 crores for period November 2010 to December, 2013.

8. It was fairly admitted by Shri R.K. Mehta, Learned Counsel for the Respondent no. 2 that they are prepared to pay actual Water Charges and Electricity Duty after verification of the bills which have since been submitted by the Applicant/Appellant to them. Thus, the divergent issue that remains for us to consider for the purpose of interim order is the computation of Capacity Charges and whether the transmission constraints are to be considered to determine the Plant Availability Factor.

9. We find from the impugned order (Paragraph 16) that the State Commission has accepted the contention of the Appellant that due to transmission constraint, they have not been able to generate at full capacity and inject State's quota of power to the State transmission system and the 220 KV double circuit transmission line running between the power project of the Applicant/Appellant and the Budhipadar grid sub-station of the OPTCL, the State transmission licensee is capable of carrying power around 400 MW in sustainable mode for which the Applicant/Appellant has limited generation from unit II accordingly. We also find in the impugned order that Orissa SLDC has to schedule the generation of the Appellant's power station.

10. In view of the above accepted position in the impugned order by the State Commission regarding transmission constraints, we feel that for computation of the Plant Availability Factor and Fixed Charges for the power project, the transmission constraints limiting the evacuation capacity to 400 MW should be taken into account. According to the PPA, the Applicant/Appellant has to make available the capacity at the bus bars of the generating station and it is the obligation of the GRIDCO to make the arrangement for evacuation of power from such delivery points.

11. We feel that in this case the balance of convenience lies in favour of the Applicant/Appellant in view of the cash crunch being faced by them due to non-payment of the current dues and if current payments are not released then it may affect the generation.

12. In view of above we pass the following interim order, subject to adjustment on the disposal of the main Appeal.

i) There is no dispute regarding the Annual Fixed Charges for unit no. 2 for the period 2010-11 to 2013-14. The Capacity Charges payable to the Applicant/Appellant for the FYs 2010-11 to 2013-14 shall be worked out based on Plant Availability Factor computed considering the transmission constraints with capacity of 400 MW of the 220 KV Double Circuit line from the SESA Sterlite Plant to Budhipadar sub-station of OPTCL instead of installed capacity of 600 MW. Orissa SLDC is directed to compute the Plant Availability Factor for the FYs 2010-11 (from November 2010) to 2013-14 as per the above directions and inform the Appellant and GRIDCO within 30 days of passing of this order. The Applicant/Appellant will revise

the bills for the FYs 2010-11 to 2013-14, reworking the Capacity Charges based on the Plant Availability Factor determined by the SLDC and Energy Charges for respective financial years determined in the impugned order. Regarding Water Charges and Electricity Duty, the same will be paid by GRIDCO as per the bills submitted by the Applicant/Appellant. If the net amount due to the Applicant after adjusting the payment already made by GRIDCO is positive then the GRIDCO will pay the balance amount to the Applicant/Appellant within 30 days of raising of the bill by the Appellant. If the net amount is negative then GRIDCO will adjust the same in the current bills of the Applicant/Appellant.

- ii) Henceforth, the Applicant/Appellant will declare the availability of unit 2 connected to OPTCL system every day for the next day to the SLDC as per the capability

of the unit and the proposed generation schedule keeping in view the transmission constraint. The SLDC will decide the daily generation schedule for the Appellant's plant considering the demand of the Discoms and the transmission capacity. SLDC will compute the Plant Availability Factor at the end of every month as per our direction considering the transmission constraint in evacuation of power and communicate to the GRIDCO and the Appellant by 3rd day of the following month. The Applicant/Appellant will bill the Capacity Charge based on PAF intimated by the SLDC, Energy Charges of Rs.1.0449/KWH as per the impugned order and the Water Charges/Electricity Duty as per the actuals till determination of tariff by the State Commission for the FY 2014-15. GRIDCO will make the payment as per the terms of the PPA.

iii) We also direct GRIDCO to start making current payments to the Appellant from the month of April 2014 for electricity supplied by the Appellant during March 2014 and to facilitate raising of the bill for March 2014, the SLDC will compute and communicate the PAF as per our directions for the month of March 2014 by 7th of the following month.

13. With the above directions the IA is disposed of.
14. We also direct the Registry to send a copy of this order to SLDC, Orissa and OPTCL.
15. Post the main Appeal on **28.04.2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

mk