

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.498/MP/2020

- Subject : Petition under Section 79 read with Section 142 of the Electricity Act, 2003 for execution/implementation of the Commission's order dated 4.2.2020 passed in Petition No.115/MP/2019.
- Petitioner : GMR Kamalanga Energy Limited
- Respondents : SLDC, Odisha and GRIDCO
- Date of Hearing : **21.12.2021**
- Coram : Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member
- Parties Present : Shri Amit Kapur, Advocate, GKEL
Shri Vishrov Mukerjee, Advocate, GKEL
Shri Rohit Venkat, Advocate, GKEL
Shri Yashaswi Kant, Advocate, GKEL
Shri Damodar Solanki, Advocate, GKEL
Shri Akshat Jain, Advocate, GKEL
Shri Avsi Malik Sharma, GKEL
Shri R.K. Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Shri Sukanta Panda, GRIDCO
Ms. Susmita Mohanty, GRIDCO
Shri Mahfooz Alam, GRIDCO
Shri Sakesh Kumar Sharma, Advocate, SLDC
Ms. Gitanjali N. Sharma, Advocate, SLDC
Shri Bhadresh B. Mehta, SLDC

Record of Proceedings

Case was called out for virtual hearing.

2. During the hearing, the learned counsel for the Petitioner circulated note of arguments and mainly submitted the following:

- (a) The original invoices raised by the Petitioner for the years 2015-16 and 2016-17 respectively, were based on PAFM computed by the Petitioner, on original availability declarations, which was upheld by the Commission in its order dated 4.2.2020 in Petition No.115/MP/2019. The practice of SLDC to compute PAFM based on energy sent out is incorrect.



- (b) In terms of Minutes of Meeting (MoM) dated 12.7.2017, GRIDCO and SLDC had agreed that computation of PAFM ought to be as per the 2014 Tariff Regulations. Further, the said MoM were approved by the Board of Directors of GRIDCO. Thus, GRIDCO has acknowledged that the 2014 Tariff Regulations will apply. SLDC has also admitted in letter dated 22.11.2018 that PAFM for 2015-16 and 2016-17 has to be computed in line with the applicable tariff regulations.
- (c) SLDC has not considered the original availability declaration made, but has considered the availability declaration revised on the verbal instruction of SLDC to match GRIDCO's dispatch schedule.
- (d) The direction on the Respondent No.2 to correct PAFM for the period from 1.4.2015 to 31.3.2017 and direction on Respondent GRIDCO to make payments thereafter, along with LPS, within one month, was based on clear findings in paragraphs 50 and 51 of the order dated 4.2.2020 in Petition No. 115/MP/2019 that the non-payment of capacity charges to the Petitioner for the said period was due to the fault of the Respondents. Accordingly, the Respondent GRIDCO is liable to make payments along with late payment surcharge to the Petitioner.
- (e) GRIDCO has also not made payment of the fixed charges for the entire period of 2015-16 and 2016-17 along with late payment surcharge in accordance with the directions of the Commission in the order dated 4.2.2020. Since the bills of the Petitioner were already pending before the Respondent GRIDCO, no revised bills are required to be raised by the Petitioner, except for the updated bill for LPS amount, due to the delay in payments by the Respondent GRIDCO.
- (f) In view of the above, the outstanding capacity charges payable by GRIDCO is Rs.117 crore along with LPS of Rs.76 crore, in all amounting to Rs.193 crore. Pending correction of PAFM computation for 2015-16, the Petitioner had raised LPS invoice for Rs.46 crore only on 13.3.2020. However, the total LPS amount payable by GRIDCO in the event PAFM for 2015-16 is computed, based on original availability declarations of the Petitioner, would be Rs.76 crore.
- (g) In terms of Section 94 of the Electricity Act, 2003, this Commission has the powers of a 'civil court' under the Civil Procedure Code. Also, as held by the Hon'ble Supreme Court in TANGEDCO v PPN Power Generating Company (P) Ltd (2014) 11 SCC 53, this Commission is a 'court' and consequently has the power to execute its own orders.

3. The learned counsel for the Respondent SLDC submitted that the information sought by the Commission vide ROP dated 30.7.2021 has been furnished by SLDC. Referring to the additional information furnished, the learned counsel submitted that the PAFM computations were based on the final revised schedule declarations made by the Petitioner. He also pointed out that there have been no verbal instructions by SLDC for revision of schedules to the generator (Petitioner). In response, the learned counsel for the Petitioner pointed out that SLDC has recomputed the PAFM for 2016-17, based on the original availability declarations of the Petitioner, but has not adopted the same for 2015-16. Referring to the MOM signed by the parties, the learned counsel for the Petitioner pointed out that the Petitioner had raised the issue of revision of the original



availability declarations, based on verbal instructions, to match GRIDCO's dispatch schedule.

4. The learned counsel for the Respondent, GRIDCO circulated note of arguments and made detailed submissions in the matter. He submitted that the Petitioner had not raised any revised fresh invoices, based on the revised PAFM computed by SLDC for the period 2015-16. The learned counsel also submitted that the Petitioner's bill towards payment of Late Payment Surcharge (LPS) cannot be considered as bills for capacity charges have not been submitted by the Petitioner. He further submitted that in terms of the Commission's order dated 4.2.2020 in Petition No. 115/MP/2019, the Petitioner is required to submit fresh invoices, based on revised PAFM computations by SLDC. The learned counsel, however, submitted that the Respondent, GRIDCO may be granted two weeks' time to file its written submissions.

5. In response to the submissions of GRIDCO, the learned counsel for the Petitioner clarified that original invoices raised by the Petitioner for the years 2015-16 and 2016-17 respectively, were based on the PAFM computed on original availability declarations, and the same was upheld by the Commission in its order dated 4.2.2020 in Petition No.115/MP/2019. He also submitted that the issues raised by the Respondent GRIDCO have already been considered and rejected by the Commission in the said order dated 4.2.2020 and, therefore, the Respondent cannot be permitted to re-agitate the same issues in the execution petition.

6. The Commission after hearing the parties, permitted the Respondent, GRIDCO to file its written submission by 17.1.2022 after serving copy to the Petitioner, who shall file its response, if any, by 21.1.2022. These submissions shall be filed by the parties within the due dates mentioned and no extension of time shall be granted.

7. Subject to the above, order in the Petition was reserved.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

