ORISSA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012

*** *** ***

Present : **Shri B. K. Das, Chairperson**
Shri K. C. Badu, Member

In the matter of An application under Clause 12.12 and 12.16 of OERC Order dated 14th March, 2008 regarding comprehensive pricing policy for sale of surplus power from captive generating plants.

AND

<u>CASE No. 06/2009</u>

In the matter of

GRIDCO Limited	....	**Petitioner**
Vrs.		
Confederation of Captive Power Plants	….	**Respondent**
AND		

<u>Case No.07/2009</u>

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Jindal Stainless Steel	….	**Respondent**
AND		

<u>Case No.08/2009</u>

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Aryan Ispat & Power Pvt. Ltd.	….	**Respondent**
AND		

<u>Case No.09/2009</u>

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Orissa Sponge Iron Ltd.	….	**Respondent**
AND		

<u>Case No.10/2009</u>

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Rathi Steel & Power Ltd.	….	**Respondent**
AND		

Case No.11/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Indian Metals & Ferro Alloys Ltd.	….	**Respondent**

AND

Case No.12/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Bhusan Steels Ltd.	….	**Respondent**

AND

Case No.13/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Vendanta Aluminium Ltd.	….	**Respondent**

AND

Case No.14/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Bhusan Power & Steel Ltd.	….	**Respondent**

AND

Case No.15/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Neelachal Ispat Nigam Ltd.	….	**Respondent**

AND

Case No.16/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s Arati Steels Ltd.	….	**Respondent**

AND

Case No.17/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		
M/s SMC Power Generation Ltd.	….	**Respondent**

AND

Case No.18/2009

M/s GRIDCO	….	**Petitioner**
Vrs.		

M/s Pattnik Steels & Alloys Ltd. …. **Respondent**

AND

Case No.19/2009

M/s GRIDCO …. **Petitioner**

Vrs.

M/s Nava Bharat Ventures Ltd. …. **Respondent**

AND

Case No.20/2009

M/s GRIDCO …. **Petitioner**

Vrs.

M/s VISA Steel Ltd.,
M/s Shyam DRI Power Ltd. &
M/s Tata Sponge Iron Ltd. …. **Respondents**

On behalf of petitioner- GRIDCO: Mr. A.C. Mallick, Director (Comm.) and Mr. U.K. Panda

On behalf of all Respondents : Mr. Sanjeev Das, Secretary, CCPPO

Date of hearing: 25.02.2009 **Date of Interim Order: 28.02.2009**

O R D E R

As all the above noted cases are alike in nature, the Commission heard analogously and passed the common interim order.

1. The Commission through a consultative process followed by Public Hearing on 03.01.2008 had issued a Policy on harnessing of Surplus Power from Captive Generating Plants vide Order dated 14.03.2008 in Case No.72/2007 which inter-alia stipulates as under:

"(a) Firm Power:

- Those captive generators who give a commitment for supply of power for a period of more than 3 months & upto 1 year shall be considered as supplier of firm power of electricity form their Captive Generating Plants.

- The firm supplies may be procured form CGPs by GRIDCO/ Distribution Licensees through the Competitive Bidding route as per provision under Section-63 of Electricity Act, 2003.
- To avoid cartelization of a few large CGPs artificially boosting the pricing of surplus power from CGPs, the Commission has capped that the acceptable cost determined through the competitive bidding route should be within 10% of the maximum of cost of generation which can be certified by reputed firm of CAs to be appointed & approved by the Commission for consumption by State Utilities.
- The State Utilities are free to purchase Power at a higher rate than 110 % of the cost of generation through the competitive route for purpose of trading.
- CGPs selling power to GRIDCO will have the indirect advantage of saving in transmission charge and transmission loss which at 2007-08 level will be around 34 to 35 paise/ unit.

(b) <u>Non-firm Power</u>:

- Those of the captive generators who are capable of giving day ahead schedule but are not in a position to give supply continuously for a period upto three months shall be treated as non-firm supplier of electricity. As an example, if a CGP is in a position to give its day ahead schedule for 21 days, 35 days, 40 days etc. during a period of three months shall be considered as non-firm supplier of electricity in a block period of 3 months.
- Non-firm supplier of electricity has to declare at the beginning of the period of three months about the volume of energy that they would be supplying to the state grid. In case of failure to supply the declared volume, they may have to pay penalty at double the rate so that the supplier will be in a position to provide power to the consumers even by purchase of high cost power if need arises. This rate has to be decided through the process of competitive bidding. They shall have to go through the process of competitive bidding under Section 63 of the Act where the State utilities may accept this power paying upto a maximum of 75% of

the lowest cost of firm power determined through bidding for ‘firm supply’ of electricity from the CGPs.

(c) <u>Inadvertent Power</u>:

- Other than the firm and non-firm power as stated above, any kind of injection by the Captive Generating Plants to the State Grid will be treated as purely inadvertent injection of power to the Grid. In other words power injected by the Captive Generators without giving day ahead schedule would be treated as inadvertent injection of power and would be priced equal to the pooled cost of hydro power of the State.

(d) However, there shall be no payment for any kind of injection firm, non-firm or inadvertent at frequency of 50.4 HZ or more as a matter of grid discipline.

(e) But subsisting contracts have to be dealt according to the terms of their agreements who are not covered under the ambit of this order.

(f) The CGPs are, however, at liberty to sell their power or avail Open Access as envisaged in the Act. If the CGPs are given the facilities like land at concessional rate, water supply and other benefits by the state for setting up the industries and have entered or will enter into an agreement for sale of their surplus power to the state, then the enforcements of the contractual provisions have to be addressed by the state.

(g) Once the pricing of the surplus power from the CGPs to be sold to GRIDCO which is a State Govt. designated agency is determined through transparent bidding process, this has to be placed before OERC for taking into account the same while determining the ARR for the relevant year/ years. There is no need or scope for approval for fixation of price by any other authority for supply of surplus power from CGPs to GRIDCO meant for supply to DISTCOs.

(h) The Captive Generating Plants are free to sell their power through Open Access if they do not want to participate in a bidding process for determination of tariff for sale of power inside Orissa to GRIDCO.

(i) The Commission has also decided to review the present order on Pricing of Surplus Power from CGPs at appropriate time based on feedbacks from different stakeholders and consistent with the legal provisions prevalent at that point of time."

2. GRIDCO Ltd. (GRIDCO in short) has filed 15 Nos. of applications for procurement of surplus power from Captive Generating Plants and that of the representative body of the CGPs of Orissa i.e. Confederation of Captive Power Plants, Orissa (CCPPO). These applications have been scrutinized by the Commission and are in order. These were registered as Case Nos.6 / 2009 to 20 / 2009.

3. GRIDCO in all its applications mentioned in Para-2 above has submitted the grounds of immediate harnessing of surplus power from the Captive Generating Plants of the State which are stated as under:-

(a) GRIDCO is functioning as the State Designated entity declared by Govt. of Orissa for procurement of power from generating stations and for bulk supply of power to DISCOMs in the ambit of Single Buyer Model prevalent in Orissa.

(b) GRIDCO is procuring surplus power from various CGPs of the State to meet the State consumption.

(c) GRIDCO has been procuring scheduled surplus power from different CGPs of Orissa at the graded rates approved by GRIDCO in its 105th BOD meeting (held on 27.02.2007) and subsequently by OERC in the ARR of GRIDCO as mentioned below:

(i)	Up to 8 MU per month (Less than 10 MW on an average per day)	:	Rs.2.02 / KWh
(ii)	8 MU and above per month (About 10 MW or above on an average per day)	:	Rs.2.30/KWh
(iii)	32 MU and above per month (About 40 MW or above on an average per day)	:	Rs.2.50 / KWh

(d) GRIDCO has procured the surplus power from CGPs during FY 2008- 09 (April to December, 2008) as under:

(i) From the CGPs like NALCO, RSP, IMFA and HINDALCO of about 104.57 MU against OERC approval of 352 MU.

(ii) From the Co-Generation Plants like NINL, Arati Steel and TATA of about 233.47 MU against OERC approval of 375 MU.

(iii) From other ten number of CGPs of about 447.50 MU.

(e) DISCOMs have already overdrawn around 851 MU of power during FY 09 (upto31.12.2008) which is more than the quantum approved by OERC.

(f) Due to the current scenario of an indifferent hydro stations, GRIDCO is procuring high cost UI power sometimes even by paying Rs.8/unit or more.

(g) CGPs have represented to GRIDCO that due to the global meltdown there is downsizing of production by the manufactures / industries and consequently demand for power has gone down. Due to crash in commodity price, power has now become their main commodity. The CGPs / industries intend to sell their surplus power at a reasonably incentivised price so as to sustain themselves during these difficult times.

(h) As the State is going through a power scenario causing appreciable concern, GRIDCO expects to maximize procurement of power from CGPs. Also, some of the CGPs like NBVL, Jindal Stainless ltd., Hindalco, NINL, Arati Steel Ltd., Shyam DRI, etc. are anxious to export their surplus power if they do not find a conducive market within Orissa.

(i) Further, the Commission in the Pricing Policy for surplus power from CGP has directed to procure surplus power from CGPs through competitive bidding.

(j) As per the CGP Pricing Policy approved by OERC, GRIDCO has called for the cost of generation data from different CGPs through a bid in line with the principles enunciated in the said Policy.

(k) 13 Nos. of CGPs submitted their bids, quoting their lowest price (inclusive of 10% over the cost of generation), quantum and period of supply as mentioned hereunder :

Name of the CGP	**Minimum Quantum of power/month to be supplied to GRIDCO**	**Rate Quoted (Including 10% of cost of generation) Rs. / KWh**
Bhusan Steel Ltd.	10 MW (08-09) Quantum of supply for 09-10 to be furnished after synch. Two units of	5.50

	150 MW (each).	
Aryan Ispat & Power Ltd.	5 MW (08-09) 5 MW (2009-10)	4.50
Vedanta Aluminium Ltd. (Jharsuguda)	10 MU (2008-09) 20 MU (2009-10)	4.57
NBVL (Angul)	20 MW (2008 – 09) 20 MW (2009 – 10)	5.22
SMC Power Generation	5 MW (2008 – 09) 5 MW (2009 – 10)	5.00
Pattnaik Steel & Alloys	5 MW (2008 – 09) 5 MW (2009 – 10)	5.20
IMFA	40 – 50 MW (08-09) 40 – 50 MW (April, 09 to Sept., 09) 30 MW (Oct, 09 to March, 09)	4.98
Arati Steels Ltd.	20 MW (16.01.09 to Mar, 09) 20 MW (2009-10)	5.20
NINL	5 MW (Jan, 09 to Mar, 09) 8 MW (2009-10)	4.83
Jindal Stainless Ltd.	25 MU – Janm09, 35 MU – Feb., 09, 40 MU – Mar, 09, 30 MU (April – July, 09), 40 MU (Aug, 09 – Mar, 10)	5.68
Bhusan Power & Steel Ltd.	20 MW (Sept., 09 to March, 10)	5.50
Orissa Sponge Iron Ltd.	4 MW (08-09) 4 MW (2009 – 10)	4.50
Rathi Steel & Power Ltd.	2.25 MU (Feb.09 to Mar, 09) 2.30 MU (2009-10)	3.85

(l) 2 Nos. of CGPs have submitted their bid documents, quoting their lowest price (inclusive of 10% over the cost of generation), quantum and period of supply as mentioned hereunder after the bid date.

Name of the CGP	Minimum Quantum of power/month to be supplied to GRIDCO	Rate Quoted (Including 10% of cost of generation) Rs. / KWh
Shyam DRI Power Ltd.	12 MW (Feb. to April 09) 25 MW (May to March 09)	5.15
VISA Steel Ltd.	35 MUFY2009-10	4.19

(m) GRIDCO wants to impress upon the Commission that the rates quoted by different CGPs are quite high. The rates are varying from Rs.3.85/KWh to Rs.5.68/KWh. It would be difficult to procure the power by GRIDCO at such a higher rate for the State consumption.

(n) Further, GRIDCO states that the highest selling price of power for DISCOMs (i.e. for power intensive industries) for 2008-09 are 295.05 Paise/KWh (for EHT category) and 308.68 Paise/KWh (for HT category) based on 80% PLF. In view of this, the rates quoted by all the CGPs are not logically justified. One of the reasons of any industry setting up a CGP is that the cost to it is less than the cost of power which they would have incurred if they would have been a consumer of any DISCOM and as such the cost of generation should not exceed the highest cost of power as mentioned above.

(o) There are also subsisting bilateral agreements of GRIDCO with CGPs like NALCO & IMFA (erstwhile ICCL which merged with IMFA). They are also pressing hard for higher rates due to rise in coal and oil prices. GRIDCO requests the Commission for necessary/appropriate orders in this regard.

4. Based on the grounds / reasons for immediate harnessing of surplus power from the CGPs of the State, GRIDCO in its applications mentioned at Para-3 above, has submitted before the Commission, to formulate a comprehensive pricing policy for sale of surplus power from captive generating plants with the following Prayers:

(a) To approve the procurement from CGPs, other than that specified in the ARR, including the rate of such procurement, as the power so procured is used to meet the demand of the State.

(b) As the CGPs may not be in a position to specify / commit the period of supply, there should not be any limit in the period of power supply based on which the power injected by CGPs should be considered as "firm" power supply. So the definition of firm / non-firm power as stipulated in OERC's Pricing Policy may be reconsidered. Scheduled power injected by CGPs may be considered as firm power. Power injected without day ahead schedule should be treated as inadvertent power.

(c) Different rates may give a wrong signal to the CGPs and may be demotivating the CGPs generating at lower cost. Thus, one or two rates may be considered with quantum of power as the incentive factor.

(d) The Commission may fix up a price for procurement of firm power from different CGPs for state consumption keeping in mind the average retail tariff for power intensive industries (295.05 Paise/Unit for EHT & 308.68 Paise/Unit for HT) as the prices quoted by CGPs are quite high i.e. Rs.3.85/Unit to Rs.5.68/Unit.

(e) A decision on procurement of surplus power from CGPs like NALCO & IMFA having subsisting agreements with GRIDCO may also be taken.

(f) As the CGPs are given the facilities like land at concessional rate, water supply and other benefits by the State for setting up of industries, the Commission may decide and finalise a suitable price for procurement of surplus firm power of CGPs so that maximum power can be harnessed from CGPs.

5. As the subject matters of all the applications are the same, the Commission decided to hear the matter analogously. The Commission vide Notice dated 13.02.2009 asked the Petitioner GRIDCO and all the Respondents to attend the hearing in the matter on 25.02.2009.

6. During hearing on 25.02.2009 the Commission directed representatives of GRIDCO, CCPPO and the Respondent Captive Generating Plants to present/submit their views/suggestions on sale/purchase of surplus power from Captive Generating Plants of the State.

7. Shri A.C. Mallick, Director (Commerce) and Shri U.K. Panda, Director (F&CA) on behalf of GRIDCO submitted as under:

(a) GRIDCO is functioning as the State Designated entity declared by Govt. of Orissa for procurement of power from generating stations and for bulk supply of power to DISCOMs in the ambit of Single Buyer Model prevalent in Orissa and its ARR and bulk supply price is approved by OERC for each financial year.

(b) GRIDCO has been procuring scheduled surplus power from different CGPs of Orissa at the following graded rates approved by GRIDCO in its 105th BOD meeting held on 27.02.2007.

(i)	Up to 8 MU per month (Less than 10 MW on an average per day)	:	Rs.2.02/KWh
(ii)	8 MU and above per month (About 10 MW or above on an average per day)	:	Rs.2.30/KWh
(iii)	32 MU and above per month	:	Rs.2.50/KWh

(About 40 MW or above on an average per day)

(c) GRIDCO has procured about 786 MU surplus power from CGPs and Co-Generation Plants of the State during FY 2008- 09 (April to December, 2008) as mentioned hereunder:

  (i) From CGPs like NALCO, RSP, IMFA and HINDALCO 104.57 MU against OERC approval in ARR of FY 09 for 352 MU.

  (ii) From Co-Generation plants like NINL, Arati Steel and TATA 233.47 MU against OERC approval in ARR FY 09 for 300 MU.

  (iii) From other 10 Nos. of CGPs 447.50 MU,

(d) Four nos. of DISCOMs and the long term open access customers like ICCL and NALCO have already overdrawn about 900 MU of power during FY 2008-09 (upto 31.01.2009) which is more than the quantum approved by OERC for the corresponding period.

(e) As compared to the FY 2007-08, the hydel generation from all hydel stations of Orissa are expected to generate about 2000 MU less in FY 2008-09

(f) GRIDCO has estimated that the power shortage upto June 2009 shall be around 300 MW considering the present injection from the CGPs to the tune of 130 MW. Due to such deficit power scenario, GRIDCO is procuring high cost UI power sometimes even by paying Rs.8 / Unit or more.

(g) CGPs of the State have represented to GRIDCO that due to global meltdown, there is downsizing of production by the manufacturers/industries and consequently demand of power has gone down. Due to crash in commodity price in the world market, power has now become their main commodity for these electro- metallurgical industries having the CGPs and therefore, the industries intend to sell their surplus power at higher price so as to sustain in such recessionary situation.

(h) Some of the CGPs like NBVL, Jindal Stainless Ltd., Hindalco, NINL, Arati Steel Ltd., Shyam DRI, etc. are already applying for Open Access so as to sell their surplus power outside the State through power traders or through Power Exchanges at higher rates.

(i) GRIDCO has collected the information from the State of Chhatisgarh where CGPs are selling surplus power to the State Grid @ 280 P/KWh

(j) GRIDCO had several rounds of discussion with CCPPO on the sale of surplus power from CGPs for the consumption in the State and CCPPO had indicated a price of 290 P/KWh for CGP power for consumption inside the state.

(k) GRIDCO in its ARR application for FY 2009-10 has proposed a rate of 300 P/KWh for procurement surplus power from the State CGPs.

(l) Further, the Commission in the Pricing Policy has directed to procure surplus power from CGPs through competitive bidding.

(m) As per the CGP Pricing Policy published by OERC, GRIDCO has called for the bid and cost of generation data from different CGPs through bid document in line with the firm and infirm power as envisaged in the said Policy.

(n) 13 Nos. of CGPs have submitted the bid documents, quoting their lowest price (inclusive of 10% of cost of generation) which varies from Rs.3.85 to Rs.5.68 per KWh

(o) 2 Nos. of CGPs have submitted their bid documents, quoting their lowest price (inclusive of 10% of cost of generation), which are @ Rs.4.19 and Rs.5.15 per KWh.

(p) GRIDCO wants to impress upon the Commission that the rates quoted by different CGPs are quite high.The rates are varying from Rs.3.85 /KWh to Rs.5.68 / KWh. It would be difficult to procure the power by GRIDCO at such a higher rate for the State consumption.

(q) GRIDCO submits that the highest cost of power for DISCOMs (i.e. for power intensive industries) for 2008 -09 are 295.05 Paise / KWh (for EHT category) and 308.68 Paise / KWh (for HT category) 80% PLF. In view of this, the rates quoted by all the CGPs are not logically justified. One of the reasons of any industry setting up a CGP is that the cost to it is less than the cost of power which they would have incurred if they would have been a consumer of any DISCOM and as such the cost of generation should not exceed the highest cost of power as mentioned above.

(r) There are also subsisting bilateral agreements of GRIDCO with CGPs like NALCO & IMFA. They are pressing hard for higher rates due to rise in coal and oil prices. GRIDCO requests the Commission for necessary and appropriate orders in this regard.

8. In view of the above submissions and the emerging power situation, GRIDCO suggested before the Commission to consider and approve a flat rate of 300 P/KWh for harnessing surplus power from the State CGPs for the consumption in the State as the bulk supplier expects a shortage of about 300 MW of power upto end of June 2009 (430 MW without CGP injection) and requests the State CGPs through the Commission to come forward to help the State of Orissa to come out from the present power shortage scenario by injecting a minimum of 430 MW to State Grid from 1st March, 2009 to 30th June, 2009. GRIDCO further submitted that as per the CGP Pricing Policy of the Commission, the price for sale of surplus power from the CGPs outside the State through trading may have to be fixed through mutually negotiated route or an appropriate price fixed by the Commission for the purpose. Further, GRIDCO has suggested that the status of CGPs should not be construed as changed merely on the ground that under the melt down condition their own consumption is less that 49% and they are selling surplus power beyond 51%. Again in view of the peculiar nature of functioning of CGPs, it is not possible to give commitment for supply of power for a period of more than 3 months and upto one year in order to qualify as firm supplier of power as envisaged in CGP pricing policy approved by the Commission in their order dated 14.3.2008 in Case No.72/2007. If the CGPs and the co-generating plants give day ahead schedule the surplus power supplied by them should be treated as firm supply. Any power supplied by the CGPs/co-generators without day ahead schedule should be treated as injection of inadvertent power.

9. Shri Sanjeev Das, Secretary, CCPPO in his rejoinder dtd. 24.02.2009 submitted as under:

(a) Electricity Act, 2003 had ushered in a rhetoric to encourage the generation through private partnership and quite likely to bridge the gap in public investment in the sector. The entire Act along with the Regulation of 2005 has treated the Captive Generators as a viable alternative, however, disdained by the licensees.

(b) The Captive Generators, however, have their share of problem, which is not explained by the facts mentioned by GRIDCO, nor are they in any comprehensive position to understand the plight.

(c) The thermal captive generation is not matched by equivalent production/raising of coal by the wholly owned subsidiary of Coal India Limited. The ones who generate power through waste heat recovery boilers are susceptible to the cyclical nature of the parent Industry which forces them either to stop generation when the industry is bearish as has happened now with the global meltdown due to sub prime market factors.

(d) Coal is not the only factor. Clubbed with the problem of railway placement of rakes the problem gets further aggravated. The cost is unpredictable. The business plan is in fructuous. Imported coal price hovers around Rs. 6000/- per tonne and balance coal procured through the E-Auction makes the entire process of generation of power so unviable since there is no pass through option available since Captive Generators are not IPPs. Pass through is difficult even in the product they produce since the generation quantum minimizes the cost and unless the generation is around 80% the entire business plan is topsy-turvy.

(e) Power procurement from the Captive Generators is governed by the ARR order of the Commission. The Commission may be aware that GRIDCO pays different rates to different CGPs albeit there is one rate in the ARR.

(f) However, GRIDCO has not given the same rate to NALCO and IMFA citing that the agreements are different. GRIDCO moved the Board of GRIDCO for the slab rates citing that at that relevant time NALCO and IMFA had subsisting agreements.

(g) The situation of perceived shortage is a temporary phenomenon. Industry may revive their business in the future. The entire gamut of activity linked to rural electrification shall be a far cry after the elections. The Commission may kindly keep these factors in mind before directing GRIDCO to enter into a commercial arrangement as far as power procurement from CGPs is concerned.

(h) CCPPO wants to bring to the notice of the Commission the recent judgment of CERC on the interpretation of Section 11 of the Electricity Act, 2003 in Case No.

147/2008 between RETL and KPTCL. CCPPO apprehends that a similar debate may arise in the context of Orissa just in order to curb the option available to Captive Generating Plants for Open Access. It is very clearly laid out in the judgment that the Commission is clearly above the State as per the statute. The statutory powers of the Commission emanate from Section 178 of the Act. The open access regulations or the directives to allow Captive Generating Plants to sell power under open access comes within the ambit of the legislative functions of the Commission whereas any other order under the provision of Section 11 shall be part of the administrative function of the Government. The administrative functions under Section 11 can't impinge on the legislation made by the Commission, which only will decide a course of action in the grant of open access in terms and in accordance with the open access regulations.

(i) The CERC in the same order has also directed that open access is a mandatory provision and duty of the transmission licensee to allow open access unless it can be denied on the ground of non-availability of the surplus capacity/transmission facility or on account of any transmission constraints and no other ground.

(j) It is pertinent to note that Commission realizes the huge regulatory assets of the licensees and, therefore, in Case Nos. 30 and 35 of 2008 had permitted CESU to trade power with a rider that load shedding shall not be resorted to. It also directed that CGP can be paid remunerative tariff as per the pricing mechanism approved by the Commission in Case No. 72/07 so as to encourage CGPs to make full utilization and also ensure optimal utilization of capacity to produce power to meet the present and growing demand for power.

(k) The Commission is already seized of the issue of permitting equity and non-discriminatory tariff to CGPs who are already having subsisting contract. It is clearly established that the MoU between IMFA and GRIDCO is an arrangement for wheeling of power and the rates made applicable in that MoU is part of commercial arrangement mandated by the situation prevalent at that point of time.

(l) The MOU dated 15.11.1994 between IMFA (erstwhile ICCL since merged with IMFA) is not a MOU for perpetuity as is being made out by GRIDCO, thereby excluding IMFA from any revision in rates for surplus power injected to GRIDCO, as is being made applicable to other CGPs.

(m) The MOU was entered between ICCL and GRIDCO primarily for wheeling of power from the Captive Generating Plant at Choudwar to the ferro alloys complex at Therubali. This agreement was required since open access was legitimately not available as is the position now after enactment of Electricity Act, 2003. GRIDCO has barred IMFA to get the revised rates as applicable to other CGPs on the ground that IMFA and NALCO have subsisting agreements and, therefore, IMFA is not eligible for any revised rates. However, though the MOU stipulated a rate of Re.0.77 for surplus power, GRIDCO has revised it to Re.0.93 based on the tariff order of the Commission. Thus the argument that IMFA having subsisting agreement is not eligible for any revision is illogical and incorrect.

10. Based on the grounds / reasons as mentioned above, CCPPO has submitted before the Commission to decide the following issues:

(a) Open access is a right under the Electricity Act,2003 and the Commission should direct the licensee to grant non-discriminatory open access to any CGP for inter-state trading.

(b) Subsisting agreements should not be a bar for allowing rates to member companies uniformly and non-discriminatorily. Surplus power supply to GRIDCO should be governed by equitable rates as approved by OERC whether flat or slab, starting with a minimum of Rs.3.10 per unit for consumption within the State. Any surplus arising after meeting the state requirement should be traded by GRIDCO for which a minimum rate of Rs.4.5 should be permitted by OERC although the average cost obtained under competitive bidding is worked out at Rs.5/- per unit. This rate should be round the clock. However, GRIDCO has to devise the mechanism for identifying the quantum of energy injected by each CGP and the proportion of power going into the Orissa system for consumption within Orissa and the proportion of power being traded by GRIDCO at higher tariff. This method should be properly accountable and transparent to the satisfaction of the member CGPs.

(c) If the suggestion at (b) above is not acceptable by GRIDCO in its entirety then GRIDCO may take the same 20% of surplus power for meeting its domestic demand at a slab rate beginning Rs.3.10 for 8 Million Units and the balance surplus power available with CGPs should be permitted for trading in open access mechanism by individual companies.

11. During the hearing on 25.02.2009 Shri Sanjeev Das, Secretary, CCPPO submitted the following additional points/views apart from the views submitted as above which are briefly stated hereunder:

(a) CCPPO does recognize the shortage of power in the State today and would like to support the State Grid with committed quantity of injection of surplus power from CGPs to the tune of 450 MW which may go up 600 MW in the future provided an appropriate price for such surplus power is decided by the Commission.

(b) While the global recession is already taking its toll on the industries and the prospects warrant sustainability only through a reasonable return on power supply, CCPPO requests the Commission for permission of Open Access from the State Utility as per the provisions of the statute.

(c) CCPPO apprehends that if the proposal at (a) & (b) above are not agreed to, some of the industries will be forced to be under shut down leading to loss of revenue by Govt. of Orissa on the sale of principal products as well as loss of employment of many direct or indirect workers creating law & order problems.

(d) CCPPO finally submitted before the Commission for consideration and approval of pricing of surplus power from the State CGPs as under:

(i) A graded rate of Rs. 3.10 per KWh with suitable ascending slabs for the consumption inside the State

(ii) An appropriate price in the range of Rs. 3.50 to Rs. 3.80 per KWh for the CGP power traded outside the State.

(iii) All the Captive Generating Plants/Co-generating plants shall be suitably paid every month for their contribution for consumption in side the State /outside the State as per the certification of a competent statutory body.

(iv) Captive generating plants/Co-generating plants having subsisting agreement should not be discriminated and they should be treated as suggested in (iii) above.

12. To a query of the Commission as to when the coal price and oil price has increased several times from 1994, how it is possible for a generating company to produce power and sell at a rate prevailing in 1994, the representative of GRIDCO stated that GRIDCO will like to avail the benefit of the MOU. The MOU stipulates purchase of power at a cheaper rate but Commission may take an appropriate decision keeping in view the cost of generation of power by ICCL and NALCO which is mostly guided by the prevailing rate of coal and oil.

13. During the hearing, the Commission wanted to know from GRIDCO when OPTCL & SLDC are insisting upon installation of PLCC & SCADA and establishment of communication link for synchronization of CGP to the State grid, the CGPs & Co-Generation plants cannot inject their available surplus power as and when required to meet the deficit situation of the State and under such situation what is the suggestion of Gridco for free flow of power to the State grid. Shri Mallick, Director (Commerce) on behalf of GRIDCO stated that since power will be purchased by GRIDCO, such a contingency will not arise and they will take expeditious action to see that difficulties are not faced by the Captive Generating /Co-Generation Plants for injection of surplus power to the State grid.

14. As stipulated in the CGP pricing policy of the Commission dtd.14.03.2008, cost of generation of CGP has to be certified by a reputed firm of Chartered Accountants/ Cost Accountants for consumption in the State. It will take some time for appointment of reputed Chartered Accountants / Cost Accountants for the purpose. During hearing on 25.02.2009 both GRIDCO and the representative of CGPs submitted before the Commission that it would be extremely difficult to make appropriate cost allocation of the different cost components of the industries between the CGP, its main products and other by-products. Depending on their marketing strategy, the pricing of various products including power is a dynamic affair and costs are allocated in a manner that is determined by their marketing strategies. Thus costs may be loaded on the main product as well as on the generation of the power by the CGPs as would be required keeping in view the

market requirements. Therefore, pricing of power is not entirely based on costs apportioned to a power plant.

15. **Commission's Views and Observations :**

15.1 Section 63 of the Act states that notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff, if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Govt. The National Electricity Policy and the Tariff Policy envisage that all future requirements of power should be procured competitively barring certain exceptions as provided in Para 5.1 of the National Tariff Policy. Further, the Commission is also required to encourage CGPs to be connected to the Grid. Such CGPs should inject surplus power into the grid subject to the same regulations as applicable to generating companies.

15.2 The Commission, therefore, at para 12.13 of the Order dtd. 14.03.2008 had mentioned that the surplus power from CGPs shall be through a competitive bidding with a rider that the bid price is to be within the maximum of 10 % of the cost of generation of the particular CGP for consumption by the State Utilities. Prices higher than this if considered appropriate by the purchasing utilites may be absorbed for the purpose of trading.

15.3 The CGP pricing policy stipulates that subsisting contracts with the State Designated Agency have to be dealt according to the terms of the agreement based on their MoUs with the State and are not covered within the ambit of that order. At present GRIDCO has subsisting MOU with NALCO and erstwhile ICCL which in the meantime has been merged with IMFA. While GRIDCO has purchased 66.64 MU from NALCO at a rate of 141.21 paise per unit, it has purchased 3.03 MU from ICCL at a rate of 93.60 paise per unit from April 08 to January, 2009. This is as per the subsisting agreement. In this connection, the representative of CGPs have explained their position vide para 9(l) and 9(m).

15.4 The Commission observed from the Bid Statement submitted by GRIDCO that the bidders have quoted price in the range of Rs.3.85 per KWh to Rs.5.68 per KWh for supply of about 210 MW during March, 2009 and about 220 MW during

FY 2009-10. These bids are based on their respective costs, particularly that of fuel and its availability.

15.5 The Commission observed from the power trading scenario in the two National Power Exchanges IEX and PXI for the period from 21st February, 2009 to 27th February, 2009 and noted the weighted average cost of traded power in IEX at Rs.6.33 per KWh and that in PXI at Rs.6.99 per KWh.

15.6 The Commission has noted with great concern the current status of power availability, given the current hydro situation and the present forecast of a deficit in total availability which is seen from the submission of GRIDCO. In the absence of CGP injection of 130 MW, the overall requirement of availability may rise to 430 MW as per GRIDCO's admission during the hearing.

15.7 The Commission has also noted from the submission of CCPPO that the global recession is already taking its toll on the industries and the prospects warrant sustainability only through a reasonable return on power supply. CCPPO apprehends that if the proposal for suitable/appropriate price for surplus power of CGPs is not agreed to, some of the industries of the state will be forced to be under shut down leading to loss of revenue by Govt. of Orissa on the sale of principal products as well as loss of employment of many direct or indirect workers creating law and order problems in the State.

15.8 Power sector in the state is now facing a peculiar situation wherein on one hand the CGPs can inject about 450 to 600 MW power to the State Grid if a suitable price is paid to them at this juncture. At the same time GRIDCO is not burdened with costlier powers than that of the highest cost of generation from a thermal power station in Eastern Region which hovers around 276 P/KWh. If a suitable price is not paid to CGPs, they are eager to trade in Power Exchanges or through bilateral route in open access mode at a much higher price than the bid price. CCPPO – the representative body of the CGPs apprehends that if the proposal for a suitable/appropriate price for surplus power of CGPs is not agreed to, some of the state industries will be closed. GRIDCO's concern, on the other hand, is that if the power is purchased at a higher cost and this additional cost is not passed on to the consumers through a rise in Retail Supply Tariff, the Distribution Companies would not be able pay to GRIDCO the cost of power supplied and in turn GRIDCO would default in paying to the generators. GRIDCO, therefore, submitted that the Commission should take a rational view in striking a harmonious balance to protect the interest of generators, the Bulk supplier, the Retail supplier and the consumers.

16 After going through the records and submission made by GRIDCO and the representative of CGPs and keeping in view the current difficult situation now being faced by the State as well as the recession being experienced by manufacturers and the economy, the Commission considers it fit and appropriate at this stage to pass an interim order to enable harnessing of the available idle/bottled up capacity of CGPs at a reasonable price and keep the principal producing units in a sustainable mode while at the same time not burdening the users of electricity who are also hit badly by the recession. While the CCPPO expects the price prevailing in the Indian power exchange and the price available through UI mechanism, it cannot be such as to burden all consumers with an unsustainable loading through higher price. Considering all aspects in totality and adopting the principle of "harmonious balance" the Commission hereby directs as under :-

i) Keeping in view the number of CGPs in the State and their large variations in size/capacity and usage of fuel it is difficult for both CGPs and GRIDCO to adopt the competitive bidding route. The verification of costs and determination of prices, given the manner in which costs are allocated as between the main product and captive power generated, is going to be a cumbersome and long drawn affair. Considering the incongruent nature of different CGPs and Co-generating plants, the Commission examined and decided to adopt a simple approach and mechanism by which GRIDCO can procure power from CGPs in and around a reference point of the highest generation cost, currently being procured by GRIDCO.

ii) Because of the nature of generation by a CGP and captive generators with surplus power are at liberty of selling power, even for a short duration in the Power Exchange, it is not necessary in the interim to have a dividing line between short-term and long-term power. Power that can be scheduled on a day ahead basis can be absorbed in the system and can be programmed for full procurement by GRIDCO. CGPs/Co-generating plants who are capable of giving day ahead schedule should be, for the time being, treated as suppliers of firm power. Power injected by the CGPs/Co-generating plants without giving day ahead schedule would be treated as injectors of inadvertent power.

iii) For supply of power by the CGPs/Co-generating plants to GRIDCO for sale to DISTCOs meant for consumption by the consumers in the State, the procurement price of firm power from the CGPs as indicated at (ii) above will be Rs.3.00/KWh with effect from 01.3.2009. However, to encourage co-generation as is mandated under the Electricity Act, 2003 the power generated by co-gen. plants e.g. sponge-iron plants such as NINL, Arati Steel, Tata Sponge, etc. may be given an incentive and shall be paid @ Rs.3.10 per/KWh with effect from 01.3.2009. The procurement price of Rs.3.00/KWh for all power meant for sale to Discoms is considered just and reasonable keeping in view the current cost of Rs.2.76/KWh of the highest cost of generation from a TPS in the Eastern Region. A premium of about 10% (ten percent) on this price is considered appropriate as a stimulous to the harnessing of bottled up capacity with the CGPs.

iv) In order to encourage the CGP/Co-generating plants to fully utilize their bottled up capacity for generation of captive power/Co-generation power and to enable GRIDCO to access power from different sources including CGPs/Co-generating plants for meeting the demands in the State and making available a good quantum of power for trading, GRIDCO should offer a remunerative price to the CGPs in respect of power used for trading. Keeping in view the prevailing rate in the power exchanges, UI rate and price quoted in the bidding it would be just and equitable for GRIDCO and the CGPs and Co-generating plants to have an indicative rate of Rs.3.50 per KWh for procuring surplus power meant for trading. This is merely an indicative price suggested by the Commission. However, individual CGPs/Co-generating plant and GRIDCO, if they so like, may enter into further negotiation for an agreed price above this indicative rate. However, the procurement price by GRIDCO from the Captive Generating Plants/Co-generating plants for the purpose of trading should not unduly vary from the indicative price of Rs.3.50 per KWh now being suggested by us as an interim measure. This is necessary for the benefit of the consumers of the State because the profit earned by GRIDCO from the trading will be taken as ‘other receipt’ to meet its revenue requirement and bridge the gap in the ARR. After bridging of the gap in the ARR, the balance of surplus gained on account of trading of CGPs/Co-generation power may be shared with the CGPs/Co-generation plants at the year end.

v) In respect of injection of inadvertent power the payment would be equal to the pooled cost of hydro power of the State during 2008-09 and 2009-10 as the case may be depending on the period of supply.

vi) The rate of power indicated in (iii), (iv) and (v) will also be applicable with effect from 01.3.2009 to those CGPs/Co-generating plants having subsisting contracts/ agreements with GRIDCO. This will be without any prejudice to the outcome of any dispute/arbitration pending in any court of law or any authority and will have no retrospective effect whatsoever.

vii) GRIDCO will devise a mechanism to decide on the quantum of energy to be procured for the Discoms and the quantum to be traded at the higher price of procurement. A transparent and simple accounting method must be maintained to obviate any dispute with CGPs/Co-generation plants. The accounts must also clearly show how the gap in the GRIDCO’s ARR is being bridged and how the remaining surplus is being shared with the CGPs/Co-generation plants to the extent of power traded. The Commission hastens to state that they do not wish to prescribe a price at which the quantum being traded should be procured. We are only indicating a price around which procurement may be done for trading.

viii) It will take some time for the CGPs for establishment of SCADA and PLCC, wherever not yet done. OPTCL as on date have not implemented installation of SCADA in many grid substations. As recently stated in the tariff hearing in case No.63/2008, OPTCL has already taken initiative for expansion of ULDC scheme for broadband connectivity. In view of the above and considering the present situation of power availability in the State the Commission directs that the provision of installation of SCADA and PLCC shall not be insisted upon for the CGPs before procuring their surplus power in the State grid as this is an emergent step taken by the Commission in an extremely difficult situation through which the state is passing through. However, the alternative mode of communication for the connectivity with the nearest SCADA interface point of the licensee i.e. telephone, fax, carrier communication, broadband communication, internet/other developed mode of communication should be established by the CGPs within three months from the date of synchronization with the grid.

ix) The CGPs/Co-generating plants may be paid as per the rates indicated in (iii), (iv), (v) and (vi) in the proportion of CGP/Co-generation power consumed inside the state and traded outside the state as certified by the Chief Load Despatcher of SLDC in each month.

17 The Commission further reiterates that this is a common interim order and the arrangement suggested in Para 16 is an interim implementation plan and would be operative from 01.3.2009. After 30.6.2009 the Commission would review this arrangement as envisaged in Para 12.28 of the CGP pricing policy announced by the Commission in their order dated 14.3.2008.

18 We further direct that the copy of the interim order may be sent to GRIDCO, OPTCL, SLDC and to all respondents and is to be posted in the Commission's website **www.orierc.org** immediately.

Sd/-	Sd/-
(K.C. Badu)	**(B. K. Das)**
Member	**Chairperson**