

Case No. 18/2019

Interim Order - 6

Date of hearing: 21.07.2020

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Shri P.K. Mohanty, Sr. Advocate and Shri Pranoy Mohanty, Advocate for GRIDCO Ltd., Ms.Ritu Apurva, Advocate for NTPC Ltd., Shri R.P. Mahapatra and Ms. Niharika Pattanaik, ALO, DoE, Government of Odisha are present. Nobody is present on behalf of MoP, Government of India.

2. The case has been posted on 21.07.2020 for hearing. Due to lockdown in the State for Covid-19 pandemic situation, the Commission decided to hear the matter through Video Conferencing in the Virtual Court and accordingly notice was issued to the parties concerned.
3. The learned counsel for GRIDCO states that GRIDCO had entered into PPA with NTPC on 11th August, 2006 for purchase of State's share of power allocated by the Ministry of Power from 1980 MW Barh Super Thermal Power Station-I. But when the commissioning of that upcoming power station got delayed, they entered into PPAs with OPGC, JITPL and M/s Vedanta Ltd. They also entered into PPA with NTPC Generating Station at Darlipalli on 27.12.2012 for procurement of 50% (Home-state share) for immediate alleviation of power deficit situation.
4. GRIDCO further states that whether they draw power or not from that power station they have to pay fixed charges to NTPC. They pray that the PPA entered between GRIDCO and NTPC be declared void since GRIDCO has already made alternative arrangement to procure power from other sources due to inordinate delay in commissioning of Barh Stage-I Power Station. The counsel for GRIDCO states that no power procurement can be -made without the approval of the Commission since GRIDCO is a regulated entity. Condition-15 of the License Condition of GRIDCO also supports this. The PPA is a conditional one. GRIDCO cannot wait indefinitely to procure power from Barh Stage-I Power Station. The word "Regulate" mentioned in Section-86(b) of the Act has a very wide connotation.
5. The representative of Government of Odisha supported the views of GRIDCO.
6. Shri R.P. Mahapatra, the respondent in this case states that NTPC is forcing GRIDCO to purchase power from that Power Station. The power purchase cost will be loaded on to the tariff. Since the project has been excessively delayed, the power should be de-

allocated to Odisha. The consumer interest must be safeguarded as per Section 61(d) of the Act.

7. The learned counsel appearing on behalf of NTPC vehemently opposes the prayer of GRIDCO. She states that if PPA is void then why GRIDCO has come before this Forum. The process adopted by GRIDCO is nothing but abuse of statute. GRIDCO has come before this Commission with an ulterior motive to rescind the PPA through the authority of the Commission. If tariff for this power station will be high due to time-over run, then this can be very well brought before CERC during tariff determination process. At that time, NTPC can show that those things are beyond their control. In PPA, it is clearly provided that power allocation by MoP will be integral part of the PPA. GRIDCO has already approached them for this purpose. The process of de-allocation is underway. As the de-allocation is in the purview of MoP, similarly the tariff determination is under the jurisdiction of CERC. Power to “Regulate” cannot be exercised in this manner. GRIDCO has other remedies available in their hand.
8. To the response of M/s NTPC, GRIDCO states that there is no estoppel against the statute. The project is already delayed and will be further delayed due to COVID-19 situation and is likely to come by 2022.
9. Heard the parties at length. All the parties are directed to submit their written note of submission by 04.08.2020.
10. Post the matter on 01.09.2020 for final order.

Sd/-
Member (M)

Sd/-
Member (P)

Sd/-
Chairperson