

~~NILAMANIBEHERA~~
~~NOTARY, BHUBANESWAR~~
~~GOVT. OF ORISSA (INDIA)~~
~~Regd. No-ON-39/2003~~

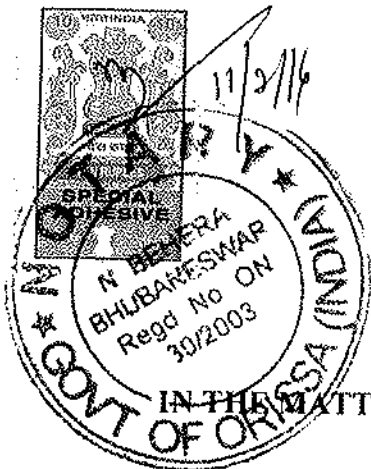
BEFORE THE ODISHA ELECTRICITY REGULATORY COMMISSION, ODISHA

FILE NO. ____

CASE NO. 53 /2015

IN THE MATTER OF:

Application for approval of Generation Tariff for Odisha Power Generation Corporation Ltd. for FY 2016-17 under Section 62 & 86 of the Electricity Act, 2003 read with approved Bulk Power Supply Agreement along with Supplemental Agreement (together referred as "Amended PPA"), related provisions of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 and OERC (Conduct of Business) Regulations, 2004.



AND

IN THE MATTER OF:

Odisha Power Generation Corporation Ltd. (OPGC Ltd.),
Zone-A, 7th Floor, Fortune Towers, Chandrasekharpur,
Bhubaneswar-751023, Odisha, India**Petitioner**

AND

IN THE MATTER OF:

Reply to observation/queries made by Hon'ble Commission and WISE, the Consultant of Hon'ble Commission on the matter, with respect to application for approval of Generation Tariff for FY 2016-17, during the Public Hearing held on February 4, 2016.

AND

IN THE MATTER OF:

Reply to submissions made by Objectors with respect to application for approval of Generation Tariff for FY 2016-17, during the Public Hearing held on February 4, 2016.

**ODISHA POWER GENERATION CORPORATION LIMITED ("The Petitioner")
RESPECTFULLY SUBMITS AS FOLLOWS:**

Odisha Power Generation Corporation Limited (herein after referred as "OPGC" or "the Petitioner") filed the application for approval of Generation Tariff for its IB Thermal Power Station (2x210 MW) for FY 2016-17 before the Hon'ble Odisha Electricity Regulatory Commission ("OERC" or "Commission") on December 7, 2015, which has been registered as Case No. 53 of 2015.

Hon'ble Commission vide Public Notice dated January 19, 2016 scheduled the Public Hearing in the above said matter on February 4, 2016 at 1500 hours in the Hearing Hall of the Commission's Office at Bhubaneswar.

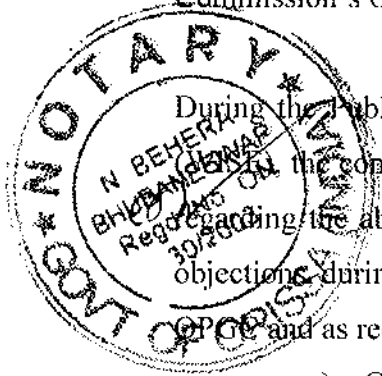
During the Public Hearing, Hon'ble Commission and World Institute of Sustainable Energy (WISSE), the consultant of Hon'ble Commission for the matter, have made certain observations regarding the above said matter. Further, the Objectors have presented their suggestions and objections during the Public Hearing held on February 4, 2016, on the above said application of OPGC and as recorded by OPGC during the hearing proceedings. The Objectors are as under:

- a) GRIDCO
- b) Shri. Ramesh Ch. Satpathy
- c) Shri. R. P. Mahapatra
- d) Shri. Anand Kumar Mohapatra
- e) Shri. G.N Agarwal

In view of the above, OPGC makes the following submissions:

***The Amended PPA was approved by this Hon'ble Commission in accordance with the OERC
Tariff Regulations***

1. It is stated and submitted that the OERC Tariff Regulations, 2014, provide for a specific carve out for the determination of the tariff for the Petitioner's existing generation plant as noted in the various regulations as re-produced below. The Regulations clearly vest



this Hon'ble Commission with the discretion to determine the norms of operation of the Petitioner's generating plant. Pursuant to a joint application filed by the Petitioner and GRIDCO in Case No. 13/2002, this Hon'ble Commission approved the Bulk Power Supply Agreement dated August 13, 1996 and the amended Supplementary Agreement dated December 19, 2012 (collectively "**the Amended PPA**") executed between the Petitioner and GRIDCO vide its order dated April 27, 2015. Importantly, this Hon'ble Commission approved the Amended PPA on April 27, 2015 pursuant to the OERC Tariff Regulations which were notified on October 10, 2014. Moreover, whilst approving the Amended PPA in the aforementioned order dated 27.04.2015, this Hon'ble Commission took note of the following clause of the Supplementary Agreement amending the Bulk Power Supply Agreement (with emphasis added by underlining):

"12.0 Revision of Tariff:

In order to avoid any ambiguity with regard to tariff norms and parameters for Unit 1 & 2, all terms and parameters for determination of tariff for 1 & 2 shall be as per this PPA as amended up to date. All tariff parameters will stand frozen till validity of this PPA as amended up to date notwithstanding modification in tariff norms by the CERC from time to time. Accordingly all references in other provisions of this PPA to change in tariff parameters in future shall be deemed to have been deleted. The tariff shall however be subject to revision at the time of renewal, replacement or extension of this Supplementary agreement or on further enhancement of the generation capacity of Units 1 and / or 2, if any."

2. Thus, the Supplementary Agreement provided that the tariff norms applicable to Unit 1 and 2 of the Petitioner's generation plant would remain unchanged for the duration of the Amended PPA. This Hon'ble Commission in its reasoned order dated April 27, 2015 in Case No. 13/2002 considered the import of the OERC Tariff Regulations as well as the various provisions of the Amended PPA, particularly the norms specific to the Petitioner's generation station, and approved the same. Hence, the tariff norms contained in the Amended PPA were approved by this Hon'ble Commission in consonance with the OERC Tariff Regulations. Further, at para 13 of its order dated April 27, 2015, this



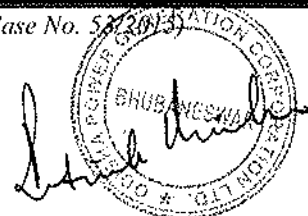
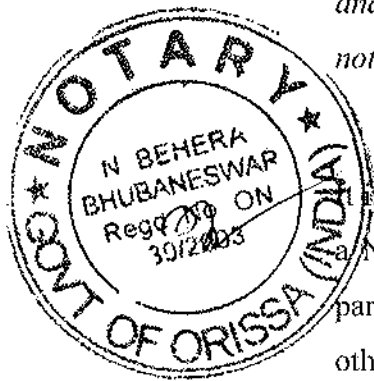
Hon'ble Commission directed the Petitioner to make an application for tariff determination for FY 2016-17 'as per the approved Amended PPA'. It follows that the Petitioner was directed to file its application for tariff determination in accordance with the tariff norms contained in the approved Amended PPA.

3. Here it would be appropriate to cite the specific components of tariff determination in respect of which a specific carve out has been provided for the Petitioner's generation plant under the OERC Tariff Regulations and the nature of the approval granted by this Hon'ble Commission:

3.1 Annual Fixed Cost

Regulation 4.4 of the OERC Tariff Regulations: "*The Annual Fixed Cost for OHPC and OPGC will be determined by the Commission by taking into account the notification(s) issued by the Government of Odisha from time to time.*"

It is pertinent to note that the Department of Energy, Government of Odisha issued a Notification dated June 21, 2008 *inter alia* directing that the tariff norms and parameters contained in the Bulk Power Supply Agreement dated August 13, 1996 other than those relating to incentive payments, would remain unchanged for the duration of the Amended PPA. As noted above, the said direction was incorporated into the Amended PPA by the Petitioner and GRIDCO vide the Supplementary Agreement dated December 19, 2012. Thus, in approving the calculation of Annual Fixed Cost as per the norms set out in the Amended PPA, the Hon'ble Commission acted pursuant to Regulation 4.4 of the OERC Tariff Regulations. Consequently, the Petitioner has submitted its application for approval of tariff as per the norms contained in Clause 3.0 of Schedule II of the Amended PPA, which describe the manner of computing Annual Fixed Cost. For instance, the Petitioner has computed the return on equity of 16% on an equity infusion of Rs. 450 Crore applying the norms set out in Clause 3.0 (c) and 3.0 (b) of Schedule II of the Amended PPA respectively. Further, the OERC Tariff Regulations, 2014 at Regulation 3.7 provide



that for generating stations which have achieved commercial operations prior to 01.04.2014, such as the Petitioner's generation plant, the debt-equity ratio allowed by the Commission for determination of tariff for the period ending 31.03.2014 shall be considered. Thus, the debt-equity ratio stipulated in the OERC Tariff Regulations, 2014 would not be applicable to the Petitioner's generation plant and the norms as per the approved Amended PPA ought to be applied in this regard.

3.2 Depreciation

Proviso to Regulation 4.21: *"Provided, further that for existing plants of OPGC, the applicable depreciation rate shall be as determined by commission from time to time."*

Clause 3.0 (a) of Schedule II of the Amended PPA makes the following provision for calculating depreciation charges:

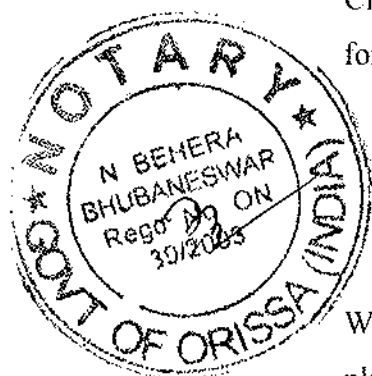
"Depreciation charges shall be equal to 7.5% of Capital Cost during any year. The total amount to be recovered through depreciation shall not exceed 90% of the Project Cost"

While Regulation 4.21 above provides a carve out for the Petitioner's generation plant in respect of 'Depreciation' as a tariff component, no depreciation has been claimed in the instant tariff determination application as the Petitioner's assets are fully depreciated.

3.3 Interest on Working Capital

Proviso to Regulation 4.26: *"Provided that for the existing generation plants of OHPC and OPGC the rate of interest on working capital shall be on normative basis and shall be equal to the SBI Base Rate plus 300 basis points as on 1st April of the year for which the application for determination of tariff is being made."*

Regulation 4.27: *"Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital"*



from any outside agency.”

It is stated that Clause 3.0 (f) of Schedule II of the Amended PPA provides for the calculation of Interest on Working Capital as under (with emphasis added by underlining):

“f) Interest on Working Capital will be worked out on the following basis on normative level of generation calculated at the rate of interest applicable to OPGC for its Working capital facility as on the fixed charge computation date

- (i) Coal cost for 1.5 months*
- (ii) Oil cost for 2 months*
- (iii) O&M expenses for 1 month*
- (iv) Receivables for 2 months”*

At present, the Petitioner is meeting its working capital requirement through internal accruals. Therefore, based on a combined reading of Regulation 4.26 and 4.27 excerpted above, it is submitted that OPGC has considered the normative interest rate as per the OERC Tariff Regulations and applied the same to the base working capital cost as contemplated under the Amended PPA. Thus, the Petitioner has applied the interest rate contemplated under the proviso to Regulation 4.26 to the approved mechanism for calculating Interest on Working Capital provided for under Clause 3.0 (f) of Schedule II of the Amended PPA.

3.4 Operation and Maintenance Expenses

Regulation 4.28(d): *“O&M norms for the existing plants of OPGC and OHPC will be as determined by the commission from time to time.”*

It is submitted that in approving the Amended PPA vide its order dated April 27, 2015, this Hon’ble Commission approved the methodology for calculating Operation and Maintenance Expenses in accordance with Clause 3.0 (d) and (e) of Schedule II of the Amended PPA. Thus, this Hon’ble Commission in exercise of its discretion



approved the methodology for calculating Operation and Maintenance Expenses as per the Amended PPA, pursuant to Regulation 4.28(d) of the OERC Tariff Regulations.

3.5 Computation and Payment of Capacity Charge and Energy Charge

Regulation 4.35: *“The computation and payment of capacity charge and energy charge for existing plants of OPGC will be as determined by the commission from time to time.”*

As with the approved methodology for calculation of Operation and Maintenance Charges, this Hon’ble Commission approved the calculation of Capacity Charges and Energy Charges in accordance with norms specified in Clauses 3.0, 7.0 and 8.0 of Schedule II of the Amended PPA. It is submitted that such approval falls squarely within the discretion provided to this Hon’ble Commission under Regulation 4.35 of the OERC Tariff Regulation, 2014.

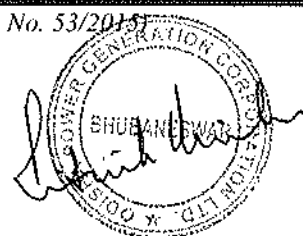
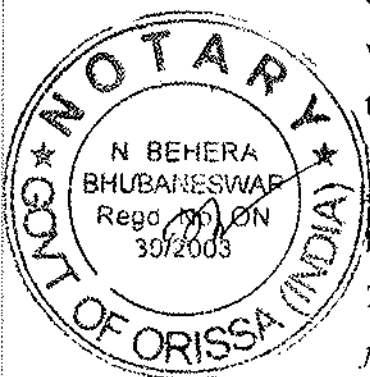
3.6 Norms of Operations for the Petitioner’s Generation Plant

Regulation 5.3(a) (ii): *“The Normative Annual Plant Availability Factor for existing Thermal Generating Stations of OPGC Ltd will be as determined by the commission from time to time.”*

Regulation 5.3(b) (ii): *“The Normative Annual Plant Load Factor for existing Thermal Generating Stations of OPGC Ltd will be as determined by the commission from time to time.”*

Regulation 5.3(c) (ii): *“The Gross Station Heat Rate for existing Thermal Generating Stations of OPGC Ltd will be as determined by the commission from time to time.”*

Regulation 5.3(d) (iii): *“The Secondary fuel oil consumption for existing Thermal Generating Stations of OPGC Ltd. will be as determined by the commission from time to time.”*



Regulation 5.3(e) (ii): *“The Auxiliary Energy Consumption for existing Thermal Generating Stations of OPGC Ltd will be as determined by the commission from time to time.”*

From the above, it is apparent that the OERC Tariff Regulations clearly vests this Hon’ble Commission with the discretion to determine the norms of operation of the Petitioner’s generating plant. Thus, in approving the Amended PPA, this Hon’ble Commission in exercise of its discretion has approved the norms of operation contained in Clause 8.0 of Schedule II of the Amended PPA, under Regulation 5.3 as excerpted above.

3.7 Incentive

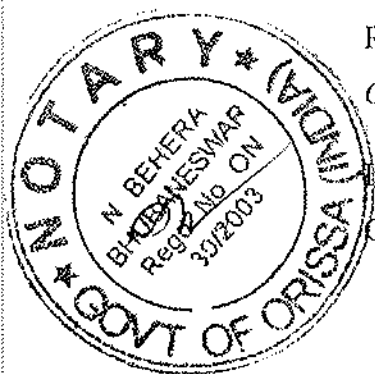
Regulation 6.10: *“The incentive applicable and payable to the existing plants of OPGC and OHPC will be as determined by commission from time to time.”*

In exercise of the discretion conferred vide Regulation 6.10, this Hon’ble Commission approved the following clause of the Approved PPA:

“Clause 4.0 INCENTIVE: Where the Actual Net Availability (AAN) in any financial year exceeds 80%, an incentive (I) as per following formula shall be paid to OPGC by GRIDCO.

INCENTIVE (I) (Rs.) Equity capital subject to maximum of 30% of Project cost x 0.35 x (% PLF achieved during the year including deemed generation -80%)/100.”

4. In light of the foregoing, it is submitted that this Hon’ble Commission’s approval of the Amended PPA and the tariff norms contained therein is in compliance with the OERC Tariff Regulations and not in derogation of them. Furthermore, it is submitted that there is no inconsistency between the norms specified in the Approved PPA and the OERC Tariff Regulations as this Hon’ble Commission has approved specific norms for the Petitioner’s generation plant contained in the PPA in accordance with the OERC Tariff Regulations referenced hereinabove. Therefore, it is submitted that the Petitioner’s



application for the determination of tariff in accordance with the norms contained in the Approved PPA cannot be assailed as being contrary to or in violation of the OERC Tariff Regulations. A number of decisions of the Hon'ble Appellate Tribunal for Electricity hold that a distinct tariff ought to be determined for certain projects in accordance with the relevant tariff determination regulations passed by the appropriate commission. In this regard, reference may be had to the judgment of the Hon'ble Appellate Tribunal of Electricity in *Punjab State Power Corporation Ltd. v. A2Z Maintenance & Engineering Services Limited & Ors* [Appeal No. 92 of 2012 in order dated 25.11.2014] upholding the determination of separate tariff for certain projects in accordance with the applicable tariff determination regulations. The relevant paragraphs of the said judgment are excerpted below:

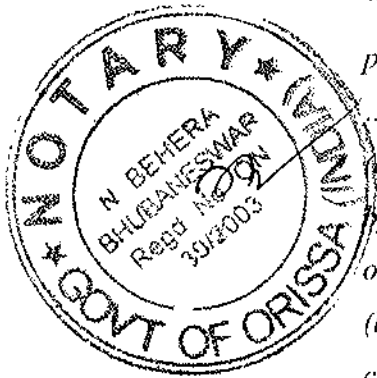
“...In the instant case, the RE Regulations specifically provide for determination of project specific tariff in Regulation 7, 65 and 66.

(a) The State Commission has given detailed reasons as to how the projects set-up by A2Z Company are materially different from typical cogeneration plant in terms of ownership, control, operations and finances. We agree with the same.

(b) The generic tariff determined by the State Commission for non-fossil fuel based co-generation project does not apply to the projects of A2Z Company due to material difference that distinguish the projects of A2Z Company.

...
(d) The State Commission has correctly determined the project specific tariff for the power projects of A2Z Company by evaluating the projects on independent terms and has disallowed various costs and expenses with respect to the generic tariff for bio-mass projects.”

5. It is also pertinent to note that the generation tariff regulations framed for thermal power plants by the state electricity regulatory commissions in other states such as Andhra Pradesh and Gujarat also provide a specific carve out for 'existing generating stations' i.e. a generating station which were declared under commercial operation prior to the



effectiveness of the said tariff regulations. The objective of such specific carve outs for 'existing generating stations' has been to treat old generating stations with power purchase agreements executed prior to the notification of the Electricity Act, 2003 (such as the Petitioner's in the instant case) as a specific category and apply a distinct framework of tariff norms to them. In this regard, the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011, provide as follows:

"27.2.2. Where, as on the date of effectiveness of these Regulations, the power purchase agreement or arrangement between a Generating Company and a Distribution Licensee for supply of electricity from an existing generating station has not been approved by the Commission or the tariff contained therein has not been adopted by the Commission or where there is no power purchase agreement or arrangement, the supply of electricity by such Generating Company to such Distribution Licensee after the date of effectiveness of these Regulations shall be in accordance with a power purchase agreement approved by the Commission..."

6. Further, the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 expressly specify a separate framework of tariff norms which are to be applied by the commission whilst determining their tariff.
7. Similarly, the Andhra Pradesh Electricity Regulatory Commission (Terms and conditions for determination of tariff for supply of electricity by a generating company to a distribution licensee and purchase of electricity by distribution licensees) Regulations, 2008 contain the following proviso to Regulation 5.2(d) therein:

"Provided further that in case of an existing generating station, the Commission shall determine the tariffs having regard to the historical performance of such generating station and reasonable opportunities for improvement in performance, if any"

8. Thus, it is apparent that state electricity regulatory commissions intentionally and consciously incorporate carve outs for older generating stations so as to apply a distinct



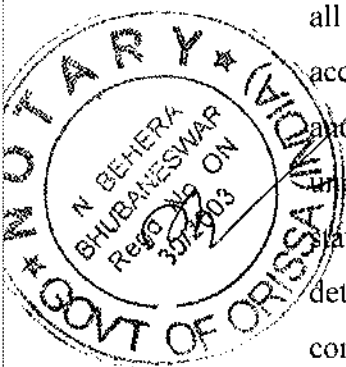
framework of tariff norms to them. It is submitted that the application of such distinct tariff norms and approval of the related power purchase agreements are thus well within the framework of the tariff regulations themselves and in departure there from.

9. Separately, it is submitted that the various judgments of the Supreme Court of India such as in *PTC India Ltd. v. Central Electricity Regulatory Commission* [(2010) 4 SCC 603] and the Hon'ble Appellate Tribunal of Electricity in *Power Company of Karnataka Ltd. & Ors v. Central Electricity Regulatory Commission & Ors* [Appeal No. 108 of 2014 in order dated 15.05.2015] which hold that regulations made by an appropriate commission would prevail over contracts between parties (i.e. power purchase agreements) are not at all applicable to the instant proceedings, since the Amended PPA has been approved in accordance with the OERC Tariff Regulations and there is no question of one overriding another. The OERC Tariff Regulations themselves provide for a distinct framework, under a distinct framework of norms, to be determined for the Petitioner's generating station, and hence there is no conflict between the two. In this context, the tariff determined in accordance with the norms contained in the Approved PPA is in compliance with the OERC Tariff Regulations.

10. As the Amended PPA has been approved under the OERC Tariff Regulations, to the extent that the Amended PPA is silent with respect to any particular tariff norms, the norms specified in the OERC Tariff Regulations would apply. Thus, it is only in respect of matters on which the Approved PPA is silent that the Petitioner has sought to apply the norms specified in the OERC Tariff Regulations, and not otherwise.

This Hon'ble Commission's Order dated 27.04.2015 approving the Amended PPA has not been challenged and has attained finality

11. The Hon'ble Commission's order dated April 27, 2015 expressly directed the Petitioner to file its applications for tariff determination as per the Approved PPA. It is submitted that this Hon'ble Commission's said order approving the Amended PPA and the tariff norms contained therein has not been challenged in an appeal or review by any party.



The said order has therefore attained finality. Similarly, the OERC Tariff Regulations which were notified as far back as October 10, 2014 have also not been challenged by any party. In this context, it is submitted that it is not open for any party to seek a review of the final order of this Hon'ble Commission approving the Amended PPA through indirect means in the present proceedings. This is borne out by the judgment of the Supreme Court in *Ram Jethmalani & Ors v. Union of India & Ors* [(2011)9SCC751], which relied *inter alia* on the judgment of the Supreme Court in *A.P.S.R.T.C & Ors v. Abdul Kareem* [(2007)2SCC466], the relevant excerpts of which are set out below:

"The Court should not permit hearing of such an application for "clarification", "modification" or "recall" if the application is in substance a clever move for review.

These observations were reiterated in the case of A.P.S.R.T.C and Ors. v. Abdul Kareem 2007 (2) SCC 466. This Court observed that the petition was in essence and substance seeking for a review under the guise of making an application for direction and modification apparently being fully aware of the normal procedure that such applications for review are not, unless the Court directs, listed for open hearing in Court, at the initial stage at least, before ordering notice to the other side and could be summarily rejected, if found to be of no prima facie merit. The Court further observed that such a move ought not to be countenanced. The move was clearly misconceived and nothing but sheer abuse of process, which of late is found to be on the increase, more for selfish reasons than to further or strengthen the cause of justice."

12. Additionally, in respect of GRIDCO, it is submitted that the application for the approval of the Amended PPA was jointly filed by GRIDCO and the Petitioner in Case No. 13/2002. Indeed, it was on the basis of representations made by GRIDCO *inter alia* to submit the Amended PPA for approval before this Hon'ble Commission, and thereby agree to the tariff norms contained therein, that the Petitioner withdrew Special Leave Petition Nos. 6812-6813 of 2005 pending before the Supreme Court of India. However, now at this stage, GRIDCO has in a volte face objected to the determination of tariff for

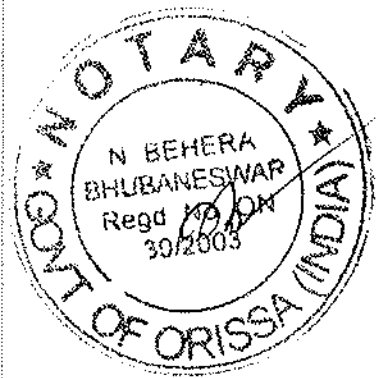


the Petitioner's generation station in accordance with the norms contained in the very same Amended PPA it had approached this Hon'ble Commission to approve. It is submitted that GRIDCO is barred by the principle of promissory estoppel from questioning the approval of the Amended PPA and the norms therein by this Hon'ble Commission. In this regard, reference may be had to the judgement of the Supreme Court in *Union of India & Ors v. Godfrey Philips India Ltd.* [(1985) 4 SCC 369]

"9. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties."

It is relevant to reiterate that OERC Tariff Regulations, 2014, provide for a specific carve out for the determination of the tariff for the Petitioner's existing generation plant as noted above. The Regulations clearly vest this Hon'ble Commission with the discretion to determine the norms of operation of the Petitioner's generating plant. Thus in the given context, it is now not open for GRIDCO to seek a departure from the tariff norms agreed to by the parties in the Amended PPA, which GRIDCO submitted jointly with the Petitioner to this Hon'ble Commission for approval and which has since been approved. This view is supported the recent judgment of the Supreme Court of India in *Gujarat Urja Vikas Nigam Limited v. EMCO Limited & Anr* [2016 SCC Online SC 97] where the apex court held as follows (with emphasis added by underlining):

"36. But the availability of such an option to the power producer for the purpose of the assessment of income under the IT Act does not relieve the power producer of the contractual obligations incurred under the PPA. No doubt that the 1st Respondent as a power producer has the freedom of contract either to accept the price offered by



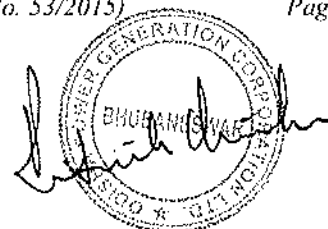
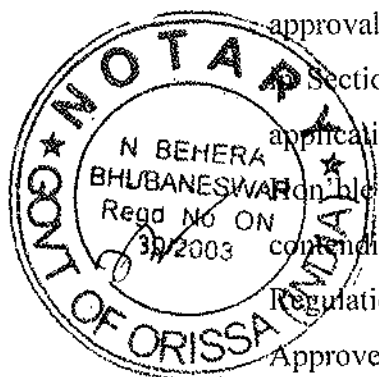
the Appellant or not before the PPA was entered into. But such freedom is extinguished after the PPA is entered into.

In this regard, reference may also be had to the judgment of the Supreme Court of India in *Bangalore Electricity Supply Co. Ltd. v. Konark Power Projects Ltd. and Ors.* [2015 SCC Online SC 1089] where the apex court held as follows (with emphasis added by underlining):

13. Thus, GRIDCO would be bound to abide by the tariff norms set out in the Amended PPA which it jointly submitted with the Petitioner and is estopped from changing its stance in this regard.

14. In any event, any fresh challenge (directly or indirectly in the instant proceedings) to the approval of the Amended PPA would be barred by the principles of *res judicata* set out in Section 11 of the Code of Civil Procedure, 1908. The objectors to the Petitioner's application for determination of tariff, including GRIDCO, have sought to reverse this Hon'ble Commission's approval of the Amended PPA and the tariff norms therein by contending that the norms prescribed for other generating stations in the OERC Tariff Regulations ought to be applied to the Petitioner instead of the norms contained in the Approved PPA. In this regard, reference may be had to the Hon'ble Supreme Court of India's judgment in *Rajendra Kumar v. Kalyan (dead) by LRs* [(2000) 8 SCC 99] where it shed light on the principles of *res judicata* in the following terms (with emphasis added by underlining):

"14. The doctrine of res-judicata has received a statutory sanction in the Code as a matter of prudence and to give due weightage to parties. The doctrine thus is to achieve finality of dispute between the parties being a principle of prudence so as to give efficacy to a finding of the Court rather than permit the parties to go to trial more or less on the same issues over again and thus introducing a possibility of conflict of views. Judicial verdict has its special sanctity and cannot be the subject-matter of discussion at any future time involving identical or similar issues."

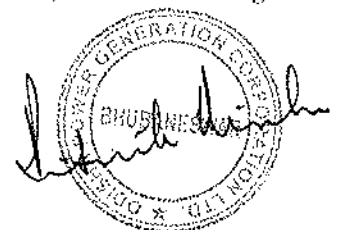
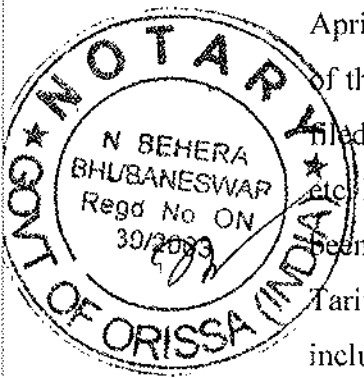


15. In light of the above well settled position of law, it is submitted that the validity of this Hon'ble Commission's final order dated April 27, 2015, approving the norms in the Approved PPA, cannot be indirectly challenged in the instant tariff determination proceedings.

16. OPGC has filed the present application based on agreements entered between OPGC and GRIDCO, as mentioned in para 2.2 of the Petition. OPGC in its Petition has submitted that the principles laid in OERC Generation Tariff Regulations, 2014 have been followed to the extent as applicable to OPGC for the present application, which is not acceptable to GRIDCO, as submitted in para 3(c) of its submission. OPGC submits that OPGC has filed the present application as per the directives of Hon'ble OERC vide Order dated April 27, 2015. Since, the tariff is to be determined by Hon'ble OERC in consideration of the norms of determination of tariff as per the Amended PPA, for any petition to be filed certain general aspects such as scope of Petition, procedure for tariff determination, etc. have to be considered based on certain Regulations and accordingly the Petition has been filed considering the general aspects as per the provisions of the OERC Generation Tariff Regulations, 2014. GRIDCO has also appreciated the fact that Amended PPA includes Capital Cost, Operation Performance Parameters and Principles for Tariff determination, billing mechanism, etc. which has been given regulatory approval by Hon'ble OERC in its Order dated April 27, 2015. Hon'ble OERC had also recognised the fact that Amended PPA includes such parameters and accorded the approval after due consideration of the same. Accordingly, OPGC has filed the Petition on the basis of amended PPA. Hence, the recovery of fixed charges and computation of energy charges shall be as per terms and conditions of the Amended PPA.

17. As regards the fuel prices and computation of energy charges, there is already mechanism of FPA in place to cater the variation of approved and actual price and GCV of fuel as per Amended PPA. OPGC humbly requests the Hon'ble Commission to consider the pass through of actual fuel prices as per terms and conditions of Amended PPA.

18. OPGC objects the GRIDCO's submission to consider the ash utilisation expenses as part



of O&M expenses. OPGC has already submitted in its Petition that it has proposed the ash utilisation expenses in view of the directives from State Pollution Control Board, Odisha and Ministry of Environment & Forest (MoEF), Government of India vide its Notification dated November 3, 2009. At present, OPGC has achieved 20% utilization only which does not comply with the MoEF Notification. Hence, for additional utilisation of ash, OPGC has to take extra initiative and meet additional costs, to bring improvement in ash utilization.

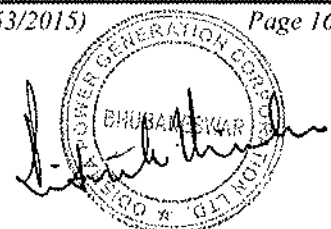
19. Hon'ble Commission during the hearing asked the details of ash utilisation expenses of Rs. 3.5 Crore and enquired about the percentage of utilisation with respect to ash generation in the financial year 2016-17. OPGC submits the break-up of ash utilisation cost as under:

- a) Extending Subsidy To Visakha Cement (2500 MT /Month) =Rs. 45.00 lakh
- b) Extending subsidy to ash brick Manufacture (3000 MT/Month) =Rs. 54.00 lakh
- c) Extending subsidy for Ash filling in L&T road((1,50,000 MT) = Rs. 225.00 lakh
- Low lying area filling (20,000MT) = Rs.30.00 Lakh.

The above quantity amounts to 24% of total Ash generation in the year.

20. OPGC objects GRIDCO's contention that environmental or additional capex towards operational sustenance should not be allowed as they are not provided for in the PPA. OPGC submits that Clause 10.0 of the existing PPA stipulates that any other kind of imposition whatsoever imposed by any Government (State or Central) and /or any other local bodies in environmental protection shall be billed by OPGC and will be paid by GRIDCO. The capitalisation has to be undertaken in order to comply the direction of State Pollution Control Board and schemes which are essential for operation of the plant.

21. OPGC reiterates that as regards the recovery of such additional capitalisation, OPGC while submitting the tariff calculation to GRIDCO for FY 2014-15 & FY 2015-16 has claimed such additional capitalisation as part of Year End charges for reimbursement.

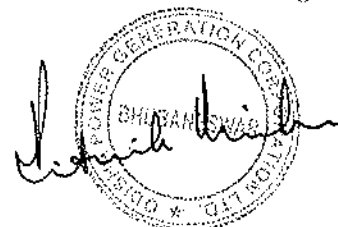
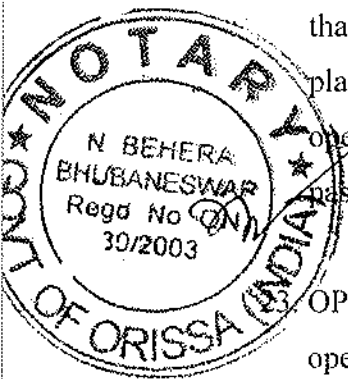


GRIDCO has not considered the same in ARR for FY 2015-16, since, scrutiny and regulatory approval is required for such additional expenditures. Accordingly, additional capitalisation has been claimed before the Hon'ble Commission for approval. OPGC also objects the GRIDCO's submission that separate Petition has to be filed for approval of additional capitalisation. OPGC has already submitted the details and additional capitalisation and the same have also been put before public for the comments. The separate Petition will also require the same process to be followed and will merely delay the approval process. Hence, OPGC requests Hon'ble Commission to approve the additional capitalisation and allow the recovery as part of tariff for FY 2016-17.

22. As regards the submission made by Shr. Ramesh Ch. Satpathy that seven (7) Mini-hydro plants are not operating while there is a move for more renewable energy, OPGC submits that three plants are under operation though OPGC is not getting any revenue from these plants. Signing of PPA between OPGC and GRIDCO for power sale from the three operational plants is being pursued. The revival of other projects has been assessed in the past and have been found to be unviable due to unavailability of adequate water.

OPGC denies the submission of Shri. Ramesh Ch. Satpathy that there is inefficient operation of the plant. The Objector has made generic statement without putting any facts before the Hon'ble Commission. OPGC has taken all efforts to make operation of the plant efficient. OPGC plant performance in terms of PLF has always been better than national average. As per CEA report December 2015, OPGC stands number 1 in state sector and number-7 across all sectors in all India level in the current financial year. This speaks volumes about the performance level of OPGC plant.

24. As regards the submission of CAG reports, OPGC clarifies that OPGC is a government company and the statutory auditors are appointed by C&AG of India to conduct the statutory audit and submit their report. On the basis of the said report the C&AG also conducts supplementary audit every year. Besides above the C&AG also conducts transaction audit. The audit observations of CAG and the compliance by OPGC are included as part of the Annual Report, which are available for public perusal on the



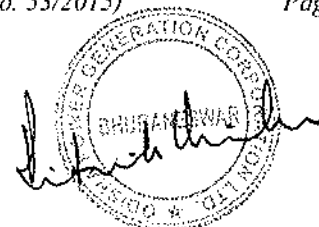
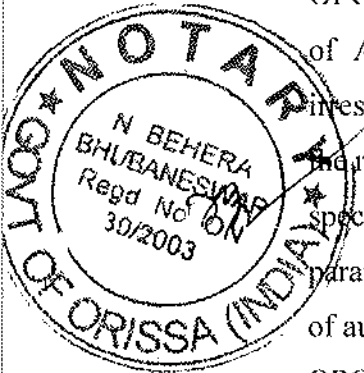
website of OPGC.

25. As regards fixed cost recovery, it may be noted that since OPGC has filed the Petition as per the approved Amended PPA, the recovery of fixed cost is linked to normative net availability of 68.49%. The contention made by Shri. R. P. Mahapatra is not correct wherein it has linked the recovery of fixed cost with normative PLF. As per OERC Generation Tariff Regulations, 2014 also, the recovery of fixed cost is linked NPAF, not NAPLF.

26. OPGC strongly objects the contention of Shri. R. P. Mahapatra to consider the actual specific oil consumption. It may be further noted that, for computation of energy charges, OPGC has considered the normative performance parameters as per terms and conditions of Amended PPA. OPGC has not considered the actual performance parameters, irrespective of whether there is gain or loss. The Objector has contended to deviate from the normative performance parameters and consider the actual values, but only in case of specific fuel oil consumption. However, such pick and choose approach, to consider parameter which has actual value less than normative, is not justified. The actual value of auxiliary consumption is higher than the normative auxiliary consumption. However, OPGC has not claimed to consider this actual auxiliary consumption for determination of tariff. It has adopted the uniform approach to consider the performance parameters as per terms and conditions of amended PPA.

27. As regards submissions made by Shri. R. P. Mahapatra regarding the coal cost escalation of 6%, OPGC submits that it has considered the weighted average price of coal for September 2015 and escalated the same by 6% to arrive at estimated price of coal for April, 2016. The escalation of 6% has been considered based on actual growth in price of coal from September 2014 to March 2015. In any case variable charge is based on the actual cost of fuel which gets adjusted in the annual adjustment bills.

28. As regards the Gross Calorific Value (GCV) of Coal, the contention of Shri. R. P. Mahapatra that GCV of coal goes as high as 3200 kCal/kg is not correct. OPGC has



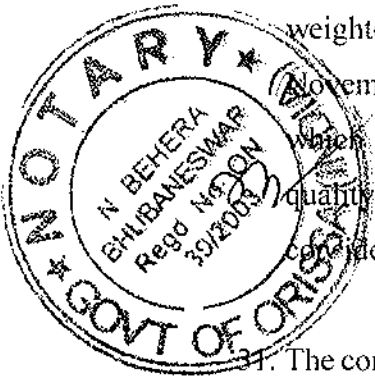
observed the variation in GCV of coal during the year. Hence, for computation of energy charges, OPGC has considered the weighted average of actual GCV from October 2014 to September 2015. The data related to month wise actual GCV received has been already submitted to the Hon'ble Commission till December 2015. In any case variable charge is based on the actual GCV of coal which gets adjusted in the annual adjustment bills.

29. As regards the additional capitalisation towards ash pond, OPGC appreciates Shri. R. P. Mahapatra's submission to support the claim of additional capitalisation. OPGC humbly requests the Hon'ble Commission to consider the additional capitalisation and decide the manner for recovery of additional capitalisation through tariff.

30. As regards the submissions made by Shri. Anand Kumar Mohapatra regarding the projected PLF, OPGC submits that it has projected the PLF of 81.46% considering the weighted average PLF for last five years from FY 2011-12 to FY 2015-16 (up to November 2015). Hence, it has taken into account the past performance of the plant which takes into account generation loss on account of forced outages and poor coal quality. Also, OPGC has submitted the monthly generation plan to Hon'ble Commission considering the planned outages during FY 2016-17.

31. The contention of Shri. Anand Kumar Mohapatra that favourable movement in fuel prices should be passed through, is not justified. As per terms and conditions of Amended PPA, the actual prices of fuels shall be passed through irrespective of upward or downward movement, since the prices of fuel are not within the control of OPGC. The OERC Generation Tariff Regulations 2014 also allows to pass through the actual prices of fuel. State Electricity Regulatory Commission across the country has adopted to pass through the actual fuel prices and allow the recovery of the same through fuel price adjustment.

32. As regards contention of Shri. Anand Kumar Mohapatra that project cost should exclude capital costs incurred for Units 3 & 4, OPGC clarifies that that the total project cost of OPGC was Rs.1,135 Crore of which, Rs.75 Crore was not allowed in the original PPA, being part of Units 3 & 4, restricting total project cost to Rs.1,060 Crore. Further, for the



purpose of maintenance, Rs.30 Crore has not been allowed in the original PPA, being cost incurred towards common facilities for Units 5 & 6.

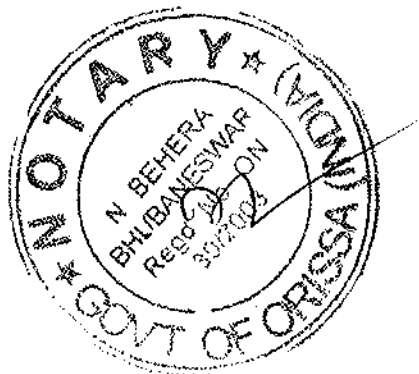
33. OPGC rejects the objections of Shri.G.N.Agarwal on the legality of the PPA as the Amended PPA has been approved in accordance with OERC Regulations 2014 and the Petitioner and GRIDCO are competent to execute the Amended PPA. Further, it is submitted that the Amended PPA is not contrary to any applicable Law or prevalent regulations.

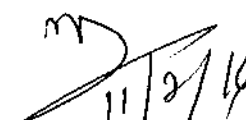
The Petitioner craves leave to submit a detailed reply to the written submissions of the Department of Energy, Government of Odisha and the objectors in the instant case, once the Petitioner has been served with the said submissions and has had an opportunity to review the same.


Petitioner


Place: Bhubaneshwar

Date: 11th February 2016




11/2/16
NILAMANI BEHERA
NOTARY, BHUBANESWAR
GOVT. OF ORISSA (INDIA)
Recd. No-ON-39/2016