

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

CORAM:

1. **Shri Ashok Basu, Chairperson**
2. **Shri Bhanu Bhushan, Member**

Petition No.112/2006

In the matter of

Request for certain clarifications on the tariff policy issued by the Government of India vide notification published in the Gazette dated 6th January, 2006 ("Tariff Policy");

And in the matter of

Applicability of the Tariff Policy to the petitioner's Maithon 1000 MW Thermal Power Project;

And in the matter of

Applicability of the exemption provided to "State owned/controlled company" under Clause 5.1 of Tariff Policy to the petitioner company;

And in the matter of

Exemption from the applicability of the requirement of competitive procurement of power under the Tariff Policy in respect of the distribution licensees intending to procure power from the petitioner.

And in the matter of

Maithon Power Limited, New Delhi

... **Petitioner**

The following were present:

1. Shri Amit Kapoor, Advocate
2. Shri R.K. Aggarwal, MPL
3. Shri K. Ravinder, MPL
4. Shri M.P. Gupta, MPL
5. Shri G.R. Nagendran, MPL

**ORDER
(DATE OF HEARING : 11.1.2007)**

We have heard Shri Amit Kapoor, Advocate for the petitioner.

2. The petitioner, Maithon Power Limited seeks a declaration/clarification that as a State controlled/owned company it is exempt from applicability of the condition in clause 5.1 of the Tariff Policy notified by the Central Government on 6.1.2006, which lays down that all future requirement of power should be procured competitively by the distribution licensees. The Tariff Policy excludes State controlled/owned companies if it is identified as developer, from the requirement of procurement of power competitively by the distribution licensees.

3. Maithon Power Limited has been jointly promoted by Damodar Valley Corporation (DVC) and BSES for executing the Maithon Power Project. Initially, BSES and DVC subscribed to the equity capital of the petitioner in equal proportion. However, subsequently BSES exited and thereupon DVC acquired the entire equity capital of the petitioner company. Still later, Tata Power Company Limited (TPL) acquired 74% of equity of the petitioner company, with DVC retaining to hold the balance 26%. The petitioner company has proposed to set up 1000 MW Maithon Power Project. 300 MW of power is proposed to be sold to DVC and the remaining 700 MW to Tata Power Trading Company Limited, a subsidiary company of TPC.

4. It has been stated by the petitioner that the provisions of the shareholder's agreement empower the Central Government through DVC to restrict or regulate the affairs of the petitioner company in certain respects and, therefore, the petitioner is a state-controlled company, and accordingly exempt from those provisions of clause 5.1 of the Tariff Policy which lay down that the requirement of electricity should be procured through the process of competitive bidding.

5. We have perused the shareholders agreement signed by DVC and TPC with the petitioner company. Article 5 of this agreement provides for management of the petitioner company. Under the agreement, each party is entitled to nominate one director per 10% in the paid up share capital held by such company. Thus, DVC can have maximum of 2 directors and TPC maximum of 7. Number of persons to be nominated by either party on any Committee or sub-committee shall be in proportion to their share capital, though there is at least one nominee of each party. Under the agreement, the management of day-to-day affairs of the petitioner company are vested in the Managing Director, a nominee of TPC. Similarly, Chairman of the Board is also to be nominated by TPC.

6. From these provisions, it appears to us that TPC's control over the management of the petitioner is predominant. It further appears that adjudication of the matter raised in the petition without any lis or dispute does not seem to fall within the scope of the functions of the Commission in terms sub-section (1) of Section 79 of the Act. It is for the Central Government who has framed the Tariff Policy to take a view in the matter for the purpose of determining whether a particular utility is outside the scope of para 5.1 of the Tariff Policy. Accordingly, Shri Kapoor fairly agreed that the matter needs to be taken up with the Central Government.

7. Accordingly, the petition stands disposed of with liberty to the petitioner to approach the Central Government for clarification.

**Sd/-
(BHANU BHUSHAN)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRPERSON**

New Delhi dated the 17th January, 2007