

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:  
Dr. Pramod Deo, Chairperson  
Shri S Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M. Deena Dayalan, Member**

**Petition No. 205 of 2010**

**Date of Hearing: 22.2.2011  
Date of Order : 22.8.2012**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003

**And in the matter of**

Assam State Electricity Board, Guwahati

**Applicant**

Vs

Reliance Energy Trading Ltd., Mumbai

**Respondent**

**Present**

1. Shri Raj Shekhar Rao, Advocate, ASEB
2. Shri Karan Lahiri, Advocate, ASEB
3. Shri M.K.Adhikari, ASEB
4. Shri RK Mehta, Advocate, RETL
5. Shri Antaryami Upadhyaya, Advocate, RETL
6. Shri J S Jaroloa, RETL
7. Shri Lakhi Singh, RETL

**ORDER**

The petitioner, Assam State Electricity Board has filed this petition with prayers as under:

- (a) To declare that as per the contractual understanding between the parties, the relevant point of reference for the purpose of calculating compensation for deviation in supply of power is the delivery point; and



(b) Direct the respondent to pay ₹23,08,956 as compensation for deviation, as per the petitioners bill dated 9.7.2009.

2. The petitioner issued Notice Inviting Tenders dated 12.10.2006 to invite bids for purchase of power for supply to the distribution companies within the State of Assam during the period 1.11.2006 to 30.4.2007. One of the conditions for supply of power was that

*“9. Without prejudice to the conditions of Force Majeure, the successful bidder(s) would require to supply at least 60% per day and 80% per month of contracted quantum of power. Any deviation from above limitations will attract compensation @ 50 paise/kWh in shortfall from the contracted quantum for the particular period.”*

3. The respondent submitted its bid under letter dated 19.10.2006. The terms and conditions for supply of power as per the price bid submitted by the respondent were at variance with the bid document on certain aspects, including the compensation for deviation from power supply/off take. In clause 17 of the price bid, the respondent stated as under:

*“17. In case of deviation from ASEB side is more than 10% of contracted energy for which open access has been allocated on monthly basis, ASEB shall pay compensation @ 100 Paise per KWh for quantum of shortfall in excess of 10% while continuing to pay open access charges as per the contract.*

*In case RETL default in scheduling of power exceeds 10% of contracted quantum of power for which open access has been allocated on monthly basis, RETL shall pay compensation to ASEB @ 95 Paise per KWh for the quantum of shortfall of permitted deviation of 10% in the energy supplied.”*

4. The respondent also suggested deviations to clauses 1 and 9 of the bid document as under:

“1. The delivery point of supply would be entry into ER ISTS.  
.....

9. Without prejudice to the provisions of Force Majeure,

In case of deviation from ASEB side is more than 10% of contracted energy for which open access has been allocated on monthly basis, ASEB shall pay compensation @ 100 Paise per KWh for quantum of shortfall in excess of 10% while continuing to pay open access charges as per the contract.

In case RETL default in scheduling of power exceeds 10% of contracted quantum of power for which open access has been allocated on monthly basis, RETL shall pay compensation to ASEB @ 95 Paise per KWh for the quantum of shortfall of permitted deviation of 10% in the energy supplied.”

5. The petitioner conveyed its acceptance to the offer of the respondent for supply of off-peak power from 1.11.2006 to 30.11.2006 under its letter dated 27.10.2006 for the following quantum:

<b>Ser No</b>	<b>Duration</b>	<b>Quantum</b>
1.	00.00 hrs to 06.00 hrs	35 MW
2.	06.00 hrs to 17.00 hrs	65 MW
3.	22.00 hrs to 24.00 hrs	65 MW

6. The petitioner through a separate letter dated 27.10.2010 conveyed its acceptance for supply of 50 MW of peak power (17.00 hrs to 22.00 hrs) during November 2006 at the rates quoted by the respondent in its letter dated 19.10.2006. However, by its subsequent letter dated 28.10.2006, the petitioner extended the peak time from 17.00 hrs to 23.00 hrs against the initial peak time of 17.00 hrs to 22.00 hrs. The petitioner by its letter dated 6.11.2006 conveyed its “on principle” acceptance of the respondent’s offer for supply of power from 1.12.2006 to 31.12.2006 round-the-clock as contained in the respondent’s offer letter dated 4.11.2006 and the earlier letter dated 27.10.2006. The respondent purchased power from Bhushan Power and

Steel Ltd (BSPL) in the State of Orissa in Eastern Region at price of `3.50/KWh and charged trading margin of 4 paise/KWh.

7. It is the case of the petitioner that there was short supply of power for which the respondent was liable to pay compensation. The petitioner has alleged that the respondent computed the quantum of short supply at the point of injection of power by BSPL and not at the delivery point, which should have been the case. When the audit authorities raised an objection, the petitioner took up the matter with the respondent. However, despite the protracted correspondence, the matter could not be resolved. The petitioner has claimed that the respondent supplied 2,19,48,480 KWh and 3,63,83,040 KWh during the months of November and December 2006 respectively against the scheduled quantity of 3,10,80,000 KWh and 4,46,40,000 KWh respectively thereby leaving a total short supply of 1,73,88,480 KWh. The petitioner has therefore alleged large scale variations in the quantum of power actually supplied over the quantum contracted. The petitioner has stated that after adjusting the permissible deviation, the short supply works out to 98,16,480 KWh. Based on this, the petitioner has worked out a total compensation of `93,25,656 against which it has already adjusted an amount of `70,17,700. Therefore, the petitioner has filed this petition to claim additional amount of `23,08,956 towards balance amount of compensation.

8. The respondent in its reply has raised the question of jurisdiction of the Commission to adjudicate the dispute under clause (f) of sub-section (1) of Section

79 of the Act. In addition, the respondent has taken preliminary objections of limitation and non-joinder of BPSL as a party since, according to the respondent, BPSL was a necessary party as the respondent had back-to-back arrangement for purchase from BPSL and sale of the contracted power to the petitioner.

9. On merits, the respondent has stated that it applied for open access for the agreed quantum of power for the month of November 2006, but was granted open access by RLDC for the following quantum and thus there was short supply:

<b>Ser No</b>	<b>Duration</b>	<b>Quantum</b>
1.	00.00 hrs to 06.00 hrs	34 MW
2.	06.00 hrs to 17.00 hrs	64 MW
3.	22.00 hrs to 24.00 hrs	64 MW

10. As regards the supply for the month of December 2007, the respondent has stated that on receipt of the petitioner's letter dated 6.11.2006 wherein the petitioner raised the question of different rate of compensation. The respondent by its letter of same date clarified the position regarding the reasons for differential in the rate of compensation and requested the petitioner to accept the terms and conditions for short-term supply of power as communicated under its letter dated 4.11.2006. Thereafter, the respondent under its letter dated 29.11.2006 forwarded to the petitioner the copy of the approval of open access accorded by RLDC for the month of December 2006. The respondent has stated that the petitioner paid a total amount of `2,47,36,318 after adjusting the amounts of `48,53,550 and `21,63,150 against the compensation payable for the shortfall in supply for the months of November and

December 2006 respectively. The respondent has also pointed out that the petitioner on 21.5.2007 returned the Demand Draft for the Earnest Money Deposit of Rs 15 lakh deposited along with its bid after final settlement of accounts. According to the respondent, the compensation was payable in terms of clause 17 of the terms and conditions of the bid submitted by it which has already been adjusted by the petitioner against the dues payable to the respondent.

11. The first question that deserves our attention is the question of jurisdiction of this Commission. The petitioner claims to have filed the petition under Section 79 of the Electricity Act, without identifying any specific provision. However, subsequently in its rejoinder the petitioner has stated that the petition could be considered under clause (k) of sub-section (1) of Section 79. The relevant statutory provisions of the Electricity Act are extracted hereunder for ease of reference:

*“79. (1) The Central Commission shall discharge the following functions, namely:-*

*(a) to regulate the tariff of generating companies owned or controlled by the Central Government;*

*(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*

*(c) to regulate the inter-State transmission of electricity ;*

*(d) to determine tariff for inter-State transmission of electricity;*

*(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.*

*(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*

*(g) to levy fees for the purposes of this Act;*

*(h) to specify Grid Code having regard to Grid Standards;*



*(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*

*(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*

*(k) to discharge such other functions as may be assigned under this Act.”*

12. The jurisdiction to adjudicate disputes is conferred under clause (f) of sub-section (1) of Section 79 of the Electricity Act. This clause confers jurisdiction on this Commission to adjudicate upon disputes connected with clauses (a) to (d) of sub-section (1). In the instant case, the dispute involves adjudication of claim for compensation arising out of the trading transactions between the parties. The question thus is whether the dispute raised in the petition might be construed to be within the ambit of any of the clauses (a) to (d) of sub-section (1) of Section 79. A plain reading of clause (f) shows that the adjudication of disputes falls within the jurisdiction of this Commission on satisfying the following conditions, namely-

(a) The dispute involves the generating company or the transmission licensee.

(b) The dispute is in regard to matters connected with clauses (a) to (d), that is, the dispute should be either connected with regulation of tariff of the generating company, or regulation of inter-State transmission of electricity, or with the determination of tariff for inter-State transmission of electricity.

13. In the case on hand, the petitioner's dispute is with the respondent which is a trading licensee. The respondent is neither a generating company nor a transmission licensee. The petitioner as an integrated entity qualifies for being treated as a generating company as defined in sub-section (28) of Section 2 of the Electricity Act,

2003. However, the dispute is not related to regulation of tariff of the petitioner. Even otherwise, the petitioner as a generating company is neither owned or controlled by the Central Government nor does it have scheme for generation and sale of electricity in more than one State. It is an admitted fact that the dispute does not involve inter-State transmission of electricity so as to fall within the jurisdiction of this Commission by virtue of clause (c) read with clause (f) of sub-section (1). The dispute relates to interpretation of scope of the agreed terms and conditions for supply of electricity by the respondent. This is purely a contractual dispute outside the realm of clause (f) of sub-section (1), without any nexus with the statutory functions of this Commission under clauses (a) to (d) of sub-section (1). Therefore, the dispute cannot be said to be falling under clause (k) of sub-section (1) since under this provision, this Commission is mandated to discharge any other function assigned under the Electricity Act. Learned counsel for the petitioner could not point out any provision of the Electricity Act under which the function of adjudication of contractual disputes is assigned to this Commission. For the foregoing reasons, the present dispute is beyond the jurisdiction of this Commission.

14. For the view we have taken on the question of jurisdiction, it is not necessary to consider the other preliminary objections raised by the respondent.

15. The petition is hereby dismissed. There shall be no order as to costs.

sd/-  
**(M.Deena Dayalan)**  
Member

sd/-  
**(V.S.Verma)**  
Member

sd/-  
**(S Jayaraman)**  
Member

sd/-  
**(Dr. Pramod Deo)**  
Chairperson

