

***CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 253/MP/2012

Subject : Petition under section 79 of the Electricity Act, 2003 pertaining to adjudication of issues relating to Power Purchase Agreement between PTC India Limited and Lanco Budhil Hydro Power Private Limited.

Date of Hearing : 23.4.2013

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

Petitioner : PTC India Limited, New Delhi

Respondents : Lanco Budhil Hydro Power Private Limited, Gurgaon
Haryana Power Generation Corporation Limited, Panchkula

Parties present : Shri Ravi Prakash , Advocate, PTC
Ms Puja Priyadarshini, Advocate, PTC
Shri Deepak Khurana, Advocate, Lanco
Shri Akhil Sibal, Advocate, Lanco
Shri Vikas Mishra, Advocate, Lanco
Shri Archit Virmani, Advocate , Lanco
Shri Gurmit Singh, NRLDC
Shri Devendra Kumar, NRLDC
Shri H.K. Chawla, NRLDC
Shri Prashant K. Shrivastava, Lanco
Shri M.G. Ramchandran, Advocate, HPGCL
Shri Chirag Kher, Advocate, HPGCL

Record of Proceedings

In response to Commission`s query regarding maintainability of the petition, learned counsel for petitioner submitted that since the Appellate Tribunal for Electricity has held that HERC does not have the jurisdiction to adjudicate the dispute, the petitioner as an inter-State trader has approached the Central Commission invoking its power of regulation of inter-state transmission of electricity under regulation 79 (1) (c) of the Act and power of adjudication under section 79 (1) (f) of the Act.

2. Learned counsel for the petitioner further submitted as under:

(a) Since APTEL in its judgment dated 9.8.2011 decided that HERC did not have the jurisdiction to go into the present dispute, there has to be a regulatory forum for adjudication of dispute as there cannot be a regulatory vacuum.

(b) Although PTC has filed a civil appeal before the Hon`ble Supreme Court, the question of termination of PPA has not been heard on merit in any of the forums. The matter has been decided only on the ground of the 'jurisdiction' of the courts and not the legality of termination of PPA. Since, the judgment of APTEL dated 9.8.2011 has not been stayed by the Hon`ble Supreme Court, which continues to hold field.

(c) He further submitted that the doctrine of estoppel is not applicable against the statute. The doctrine of election is based on the equitable principle of estoppel and has no application when statutory rights and liabilities are involved. The estoppel applies to facts and not rights bestowed on the party in accordance with statutory provision.

(d) The petitioner has always maintained its stand that either of the regulatory forums shall have jurisdiction. The respondent No. 1 has always maintained that it is not subject to the jurisdiction of any regulatory Commission merely because it had entered PPA with the petitioner. Respondent No. 1 is duty bound to state which regulatory Commission will have jurisdiction over the present dispute.

3. Due to paucity of time, the Commission directed to list the petition for further hearing on 14.5.2013.

By order of the Commission,

**(T. Rout)
Joint Chief (Law)**