

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 170/MP/2013
with I.A. No. 33/2013**

Subject : Dispute pertaining to the composite scheme of supply for power to respondent Nos. 1 and 2 (situate in the State of Haryana).

Date of hearing : 24.9.2013

Coram : Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Petitioner : Jhajjar Power Limited

Respondents : Uttar Haryana Bijli Vitran Nigam Limited
Dakshin Haryana Bijli Vitran Nigam Limited

Parties present : Shri Sanjay Sen, Sr. Advocate for the petitioner
Shri V.P. Singh, Advocate for the petitioner
Shri Aashish Gupta, Advocate for the petitioner

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

(a) The present dispute has arisen between the petitioner and the respondents with regard to the working of the plant under the bid documents and under the PPA on account of non-payment of capacity charges for the availability which the petitioner would have achieved, had the Haryana Discoms granted timely approvals for procurement of alternate coal in terms of the PPA.

(b) The petitioner, Jhajjar Power Limited (JPL) has developed the Mahatma Gandhi Thermal Power Plant (generating station) with a capacity of 1320 MW at Jhajjar district in the State of Haryana. The generating station was set up pursuant to the International Competitive Bidding (ICB) process conducted by Haryana Power Generation Company Limited for supply of 90% of the net power generated to Haryana Discoms, namely Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited. On 7.8.2008 Power Purchase

Agreement was entered with the respondents on the basis of a Case 2 bidding process.

(c) The bid document envisaged that the project was to be set up as a Mega Power Project which requires 10% of the capacity to be sold outside the State of Haryana on long term basis. Ministry of Power vide its letter dated 13.5.2009 has accorded mega power status to the petitioner's plant.

(d) Two units of the project have been commissioned. However, the respondents have not been able to provide adequate fuel/ coal for meeting the supply obligations nor authorized the petitioner to arrange coal from alternate source, in terms of the PPA. As a result of non-availability of coal, the petitioner has not achieved the normative availability of 80% which is necessary for recovery of the entire fixed cost. Against machines/ technical availability of 76.56%, the petitioner was able to achieve commercial availability of 31.05% in the financial year 2012-13.

(e) Even though the respondents have failed and neglected to fulfill the obligations under the PPA in relation to supply of coal and/ or approving procurement of coal from alternate source, the respondents have proceeded to wrongfully deduct capacity charges and also impose penalty to the tune of ` 55 crore. Such deduction and imposition of penalty is contrary to the Article 11.3.2 of the PPA.

(f) The act of unilaterally deducting payments against an undisputed bill is not sustainable, being contrary to the express terms of PPA and is flagrantly against the principles of law pertaining to levy of penalty under the Indian Contract Act, 1872.

(g) The petitioner had earlier approached HERC for certain reliefs under Section 86(1) (b) of the Electricity Act, 2003. The petition was withdrawn by the petitioner after realizing that the generating station has a composite scheme for generation and supply of electricity to more than one State and would come within the jurisdiction of the Commission under Section 79 (1) (b) of the Act.

2. Learned senior counsel for the petitioner requested the Commission to direct the respondents to permit the petitioner to procure coal from alternate sources so as to meet its contractual obligations and allow recovery of the entire fixed charges at 80% availability.

3. The Commission declined to grant any interim relief without hearing the respondents.

4. After hearing the learned senior counsel, the Commission admitted the petition and directed the petitioner to serve copy of the petition along with the IA on the respondents immediately. The respondents were directed to file their replies by 11.10.2013, with an advance copy to the petitioner. The petitioner may file its rejoinder, if any by 25.10.2013

5. The petition along with I.A shall be listed for hearing on 5.11.2013.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)