

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 283/MP/2012**

**Sub:** Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding, including the PPA.

Date of Hearing : 30.1.2013

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

Petitioner : Coastal Andhra Power Limited, Mumbai

Respondents : Andhra Pradesh Central power Distribution Co. Ltd.,  
Hyderabad  
Andhra Pradesh Southern Power Distribution Co. Ltd.,  
Tirupati  
Andhra Pradesh Eastern Power Distribution Co. Ltd.,  
Visakhapatnam  
Northern Power Distribution Co. Ltd., Warangal  
Bangalore Electricity Supply Co. Ltd., Bangalore  
Gulbarga Electricity Supply Co. Ltd., Bangalore  
Hubli Electricity Supply Co. Ltd., Bangalore  
Mangalore Electricity Supply Co. Ltd., Bangalore  
Chamundeshwari Electricity Supply Co. Ltd., Bangalore  
Maharashtra State Electricity Distribution Co. Ltd., Mumbai  
Tamil Nadu Electricity Board, Chennai

Parties present : Shri Amit Kapur, Advocate, CAPL  
Ms. Poonam Verma, Advocate, CAPL  
Shri Sadapura Mukherjee, Advocate, CAPL  
Shri Kartikeya, Advocate, CAPL  
Shir Suresh Nagaraja, CAPL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Sidhartha Dass, NCCPPL

## Record of Proceedings

In response to the Commission's query regarding maintainability of the petition in the light of pendency of the appeal filed by the petitioner before the Division Bench of Delhi High Court, learned counsel for the petitioner submitted as under:

(a) The petitioner has challenged the Notice of Termination dated 15.3.2012 in a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before Hon`ble High Court of Delhi;

(b) There is a difference in the force majeure issues raised in the proceedings before the Delhi High Court and the present proceedings before the Commission. Before the Delhi High Court, force majeure was raised to counter the Notice of Termination as the main issue related to seeking interim protection against invocation of bank guarantee. In the present petition, force majeure is being raised with respect to adjustment of tariff, an issue that is subject to CERC jurisdiction under the PPA. Moreover, the project being a UMPP, the Project is to supply power to the procurers in 4 States. As the Commission has adopted the tariff for the project, the Commission has jurisdiction to deal with the matter.

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

(a) Pursuant to the enforcement of Indonesian Regulations, the bankability of the Project has been jeopardized and therefore, the lenders have not allowed draw-down of the debt. The petitioner had informed the respondents of this situation. In response, however, the respondents terminated the PPA. This termination could be effective within 7 (seven) days and the bank guarantee could be invoked. Therefore, the petitioner immediately approached the Delhi High Court. At that time, the petitioner had not decided to approach CERC since the issue in challenge was only with regard to the Notice of Termination.

(b) The present petition does not raise any issues regarding the Notice of Termination and no relief is claimed in this regard. The two proceedings are therefore independent of each other. However, without prejudice, CAPL is willing to withdraw the petition from the High Court of Delhi, provided the respondents statement recorded before the Delhi High Court that they would not invoke the bank guarantee and would not initiate any coercive steps, continues till the proceedings before CERC gets over.

(c) Respondents have all along maintained that CERC has jurisdiction, including in their counter-affidavit filed before the Delhi High Court.

3. The Commission observed that the Delhi High Court in its orders dated 9.8.2012, 23.8.2012, 30.8.2012, 11.10.2012 and 22.11.2012 has granted opportunity to the parties to try to amicably resolve their disputes, however, the petitioner has approached the Commission during the process of amicable settlement. In response, learned counsel submitted that discussions have been going on but have not yielded any results so far.

4. Learned counsel for TNEB submitted that he had no objection to the jurisdiction of CERC to adjudicate the dispute raised in the petition. As regards the statement regarding non-invocation of the bank guarantee, the learned counsel submitted that he did not have any instructions in this regard. In response, learned counsel for the petitioner pointed out that similar statements have been recorded in the very first hearing of the appeal before the Delhi High Court and the *status quo* has been maintained. Therefore, there is no reason why TNEB should be unwilling to record the same statement before CERC. Learned counsel for the petitioner submitted that the appeal before the Delhi High Court would be withdrawn subject to the respondents going on record to state that they would not invoke the bank guarantee and would not initiate any coercive measures. He further submitted that bank guarantee is valid till January 2016. Learned counsel for the petitioner categorically submitted that the petitioner does not intend to pursue the remedy before two fora and has no desire to conceal any facts and has made full disclosure regarding the pendency of the appeal before Delhi High Court in the petition filed before CERC. Despite the fact that the respondents are not complying with their obligations under the PPA (viz. handover of land for a fuel transportation corridor, a critical element, is pending), the petitioner has still gone ahead and taken significant steps to implement the Project.

5. In response to the Commission's query whether the petitioner is interested in implementing the Project, learned counsel for the petitioner replied in the affirmative and submitted that the petitioner even outlined a blueprint for the development of the project in its letter dated 15.11.2012 if the outstanding issues were sorted out by the respondents. He submitted that the petitioner would be in a position to implement the project within 38 to 40 months after the date of recommencement of works and revalidation of financing by lenders, post resolution of the issues. However, due to non-resolution of the issues, the petitioner is unable to move forward.

6. After hearing the learned counsels of the petitioner and TNEB, the Commission directed to issue notice to the respondents on the question of maintainability and admissibility of the petition.

7. The Commission directed the petitioner to serve copy of the petition on the respondents by 10.2.2013. The respondents were directed to file their replies by 21.2.2013, with an advance copy to the petitioner, who may file its rejoinder, if any, on or before 1.3.2012.

8. The petition shall be listed for hearing on 7.3.2013 on maintainability and admissibility.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Joint Chief Legal**