

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 79/MP/2013

Sub: Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Articles 13 and 17 of the Power Purchase Agreement dated 07.08.2007 executed between the Distribution Companies in the State of Haryana and PTC India Limited and the back to back PPA dated 12.3.2009 entered into between GMR Energy Limited and PTC Indian Limited for compensation due to change in law impacting revenues and costs during the operating period.

Petition No. 81/MP/2013

Sub: Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Articles 13 and 17 of the Power Purchase Agreement dated 07.08.2007 executed between the Distribution Companies in the State of Haryana and PTC India Limited and the back to back PPA dated 12.3.2009 entered into between GMR Energy Limited and PTC Indian Limited for compensation due to change in law impacting revenues and costs during the operating period.

Date of Hearing : 10.9.2013

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

Petitioners : GMR-Kamlanga Energy Limited, Bangalore
GMR Energy Limited, Bangalore

Respondents : Dakshin Haryana Bijili Vitran Nigam Limited & Others

Parties present : Shri Amit Kapoor, Advocate for the petitioner
Shri A. Basu, GMR
Shri A.P.Mishra, GMR
Shri G. Umamathy, Advocate, Haryana
Shri Vikrant Saini, HPPC, Panchkula
Shri Varun Pathak, Advocate, DHVNL
Shri Ravi Prakash, Advocate, PTC

Record of Proceedings

Learned counsel for the Haryana submitted as under:

(a) The Commission has held in order dated 16.5.2012 in Petition No. 20/MP/2012 that the petitioner does not have a composite scheme for generation and supply of power more than one State. Since the issue of the order, there is no change in the situation which the petitioner to claim composite scheme.

(b) The petitions are not maintainable since there is no composite scheme for generation. The petitioners have different PPAs with different Discoms at different tariffs.

(c) Unit 1 of the generating station was synchronized on 27.1.2013. However, till date, power has not been supplied by the petitioner to Haryana.

(d) It is unclear whether the generating station had achieved CoD and which unit of the generating station would be used to supply power to the Haryana Discoms.

(e) The petitioner has not made the other Discoms as parties to the present proceedings.

(f) Haryana Discoms have filed a petition before the HERC involving the same PPA. The petitioner has not raised the question of jurisdiction before Haryana Commission.

2. In response to the Commission's query as to whether declaration of COD is a condition precedent for emergence of a composite scheme, learned counsel for the Haryana submitted that though COD is not a pre-condition for composite scheme, Haryana would to know only after COD from which unit power will be supplied to it. .

3. To establish the issue of composite scheme, learned counsel for the petitioner referred the Commission's order dated 16.10.2012 in Petition No. 155/MP/2012 (Adani Power Limited vs. Uttar Haryana Bijli Vidyut Nigam Ltd), order dated 16.1.2013 in Review Petition No. 26/2012 and order dated 24.12.2012 in Petition No. 160/GT/2012 (Udupi Power Corporation Limited vs. Power Company of Karnataka Ltd and Others) and submitted as under:

(a) There is a composite scheme for supply of power to three states viz. Haryana, Odisha and Bihar.

(b) The project was accorded mega power status on 1.2.2012. As per the Mega Power Policy, one of the conditions to be fulfilled in order to be accorded mega power status is to have an 'inter-state thermal power plant of a capacity of 1000 MW or more'.

(c) OERC vide its order dated 20.8.2009 has directed the petitioner to approach CERC for determination of tariff since it was an inter-state generating station.

(d) In Petition No. 40 of 2005, Nagarjuna Power Corporation Limited vs. Karnataka Power Transmission Corporation Limited and others, the Commission has held that mega power status of a generating station is proof of the fact that the project will supply power to more than one State.

(e) The Commission in Petition No. 160/GT/2012 (Udupi Power Corporation Limited vs. Power Company of Karnataka Ltd and Others) has held that CERC derives its jurisdiction from the Electricity Act, and not agreement between the parties.

(f) Hon'ble Appellate Tribunal for Electricity in its judgment dated 4.9.2012 in Appeal No. 94 of 2012 has held that the provisions of Section 86 have to be read subject to Section 79. Section 79 will have to be given supremacy and the jurisdiction of the State Commission will only be with respect to those matters which are not already covered by the jurisdiction of the Central Commission under Section 79.

4. The Commission observed that any decision of the Commission in the issue of jurisdiction will affect the beneficiaries of the generating station and therefore, they should be heard before taking a view in the matter.

5. The Commission directed the petitioner to implead the beneficiaries of the generating station and serve copy of the petition on them immediately.

6. The Commission further directed the beneficiaries to file their replies on or before 27.9.2013, with an advance copy to the petitioner. The petitioner may file its rejoinder, if any, by 7.10.2013.

7. The petitions shall be listed for hearing on 15.10.2013 on the issue of maintainability.

By order of the Commission

Sd/-

**(T. Rout)
Chief Legal**