

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 77/GT/2013**

Subject: Determination of tariff in respect of 262.5 MW gross capacity sale from Kamalanga Thermal Power Plant of GMR-Kamalanga Energy Limited (GKEL) to GRIDCO acting as nominee of Government of Odisha for procuring power for the Odisha Distribution companies from the period commencing from 1.04.2013 to 31.03.2014.

Date of hearing: 25.7.2013

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

Petitioner: GMR-Kamalanga Energy Limited,

Respondents: GRIDCO Ltd & 4 others

Parties present: Shri Amit Kapur, Advocate, GKEL  
Shri Vishrov Mukerjee, Advocate, GKEL  
Shri Tarun Mahajan, GMR  
Shri Jatinder Kumar, GMR  
Shri R.B. Sharma, Advocate, GRIDCO  
Shri S.R.Sarangi, GRIDCO

**RECORD OF PROCEEDINGS**

During the hearing, the learned counsel for the petitioner, GKEL made his submissions on the issue of 'maintainability' as under:

- a) Section 62 read with section 79(1) (b) of The Electricity Act 2003 (the Act) vests the power with this Commission to regulate the tariff of the generating company of the petitioner which has a composite scheme for generation and sale of electricity in more than one state. The power to regulate tariff in section 79(1) (b) includes determination of tariff under section 62 or 63 of the Act. If the conditions under section 79(1) (b) are satisfied, this Commission will have jurisdiction to determine the tariff.
- b) The project was awarded 'Mega Power Project' status by the Ministry of Power, Govt. of India on 1.2.2012. The present petition has been filed since the Commission in its order dated 16.5.2012 in Petition No. 20/MP/2012 had granted liberty to the petitioner to approach the Commission once a composite scheme was in place. The petitioner has a composite scheme for supply of power to (a) the State of Odisha through GRIDCO for 350 MW gross power in terms of PPA dated 28.9.2006, amended on 4.1.2011 (b) the State of Haryana through PTC for 350 MW gross power based on competitive bidding through back to back arrangements vide agreement dated 7.8.2008 by PTC with Haryana discoms and back to back PPA dated 12.3.2009 between GEL and PTC and (c) the distribution companies of Bihar for 282 MW gross power in terms of PPA dated 9.11.2011.

- c) The jurisdiction of the Commission to entertain the present petition is no longer *res integra* in the light of the following orders of the Commission
- I. Order dated 16.12.2012 in Petition No. 155/MP/2012 (Adani Power Ltd vs. UHBNL) and Order dated 16.1.2013 in Review Petition No. 26/2012.
  - II. Order dated 24.12.2012 in Petition No. 160/GT/2012 (UPCL vs PCKL & ors)
- d) The State Commission of Odisha (OERC) in its order dated 20.8.2009 in a batch of matters involving approval of PPAs of the power projects coming up within the state including that of the petitioner has directed that since these projects were interstate generating projects, petitions should be filed for approval of tariff before the central commission in accordance with section 79(1) (b) of the Act. On 27.10.2009 the respondent has written to the petitioner asking it to approach the Central Commission for determination of tariff.
- e) Since the petitioner has a composite scheme for generation and sale of power to more than one state, the petition is maintainable and the Commission has the jurisdiction to determine tariff of the petitioner.
2. In response the learned counsel for the respondent, GRIDCO submitted as under:
- I. It is evident from the order of the Commission dated 16.5.2012 in Petition No 20/GT/2012 that the petitioner has executed the PPA with the respondent and there is no other agreement which the petitioner has executed with any other beneficiary for which the tariff is to be determined under section 62 of the Act.
  - II. The judgment of the Delhi High Court dated 15.5.2012 as referred to by the petitioner during the last hearing, has no application in this case as the question for determination in the present petition is whether the PPA for sale of power from the generating station of the petitioner was entered into with the beneficiaries of more than one state, prior to 30.9.2006. In the case of BSEB and the distribution utilities in the State of Haryana, the tariff is not to be determined under section 62 as BSEB and the distribution utilities in the state of Haryana were selected on the basis of tariff based bidding process for procurement of power in terms of section 63 of the Act.
  - III. Once the power of the Appropriate Commission to determine tariff stood exhausted by section 62, the purpose of section 79 and 86 of the Act is only to identify as to with Commission would exercise such power conferred by section 62 of the Act. As determination of tariff in the present case is in respect of the respondent only, the OERC would have jurisdiction.
  - IV. Both the parties have also agreed for jurisdiction of OERC for determination of tariff in the revised PPA entered on 4.1.2011. The judgment of Delhi High Court does not deal with the determination of tariff by bidding process under section 63 of the act as the present petition deal with separate agreements with different tariffs, the judgment of Delhi High Court has no application in the present case.

- V. Under section 63 of the Act, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central government.
  - VI. The policy of common approach as submitted by the petitioner is applicable only when parties are similarly placed. The order of the Commission as referred to by the petitioner is not applicable to the instant case.
  - VII. In the above background, the petition in the current form is not maintainable before this Commission.
3. The learned counsel for the petitioner reiterated his submissions made earlier and mainly clarified as under:
- a) As regard applicability of section 62 and 63 of the Act, the judgment of the Tribunal dated 30.3.2010 in Appeal No. 106 and 107/2009 wherein it was held that Section 62 and 63 of the Act provide two alternate methods/routes for power procurement of power by a distribution licensee from a generating company, where Section 62 is the rule and Section 63 is an exception hold the field. Similarly the Delhi High Court in its judgment dated 15.5.2012 has held that the transactions involving the supply of power by the generating company to PTC would be regulated by this Commission, since PTC is selling the power to the distribution licensees for eventual supply to the consumers. This has also been considered by the Commission in its order dated 3.9.2012 in Petition No.184/2009. The instant case is squarely covered by the judgments of the High Court, the Tribunal and the order of the Commission as stated above.
  - b) The generating station has a composite scheme for generation and sale of power to more than one state as demonstrated in the petition and hence the Commission has a jurisdiction to determine the tariff of the petitioner.
  - c) The petitioner may be granted two weeks time to file written submissions in the matter.
4. The Commission after hearing the matter directed the parties to file its written submissions, with copies to the other, on or before 14.8.2013.
5. Subject to the above, order in the petition on the question of 'maintainability' was reserved.

By order of the Commission

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