

**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

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Date of Hearing : 15.10.2013

Coram : Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, 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 petitioners
Ms. Ritika Arora, Advocate for the petitioners
Shri A.P.Mishra, GMR
Shri G. Umapathy, Advocate, Haryana
Shri Varun Pathak, Advocate, DHVNL
Shri Ravi Juneja, HPPC
Shri U.K.Agarwal, HPPC
Shri Ravi Prakash, Advocate, PTC
Shri Raheel Kali, Advocate, PTC
Shri Mohit Kumar Shah, Advocate, BSPHCL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted as under:

- (a) In compliance with the directions of the Commission, the petitioner has served copies of the petitions on Bihar DISCOM, and an amended memo of parties has been filed before the Commission.
- (b) The generating station has a composite scheme for supply of power to three States viz. Haryana, Odisha and Bihar.
- (c) The generating station has been conferred with the mega power status as it has been conceived to generate and sale power to more than one State.
- (d) Haryana Power Generation Company Limited has filed Petition No. HERC/PRO-21 of 2012 before Haryana Electricity Regulatory Commission for adjudication of disputes between the Haryana Discoms and the petitioner. The petitioner has filed its reply requesting for reference of the matter to mediation without prejudice to its rights and contentions.
- (e) The petitioner has filed an affidavit before Haryana Electricity Regulatory Commission intimating about the proceedings before CERC.
- (f) Odisha Electricity Regulatory Commission has directed the petitioner in its order dated 20.8.2009 to approach CERC for determination of tariff.
- (g) To substantiate the issue of composite scheme, learned counsel for the petitioner referred to 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 in Petition No. 155/MP/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 judgment of the Appellate Tribunal in Appeal No. 94 of 2012 (BSES Rajdhani Power Limited Vs. DERC) etc.
- (h) Under the policy of common approach and considering the problems which can arise on account on multiplicity of proceedings involving the same generating station, the Commission may consider to admit the petitions.

2. Learned counsel for Haryana Discoms submitted as under:

(a) The petitions are not maintainable since there is no composite scheme for generation and sale of electricity in more than one State. The petitioners have different PPAs with different Discoms at different tariffs.

(b) In the light of the order of the Commission in Petition No. 103/2005 (Uttaranchal Jal Nigam Ltd vs. Uttaranchal Power Corporation Ltd) as well as judgment of Appellate Tribunal in Appeal No. 228 of 2006, petitions are not maintainable before this Commission.

(c) Both Bihar Electricity Regulatory Commission and Haryana Electricity Regulatory Commission have approved the PPAs for the levelized tariff discovered through competitive bidding. The tariff approved in both the PPAs are different from each other.

(d) Article 13.3.1 of the PPA mandates the seller which is affected by change in law to give notice to the procurer of such change in law. However, no notice has been issued on account of change in law in accordance with the PPA. A notice dated 31.12.2009 could not be termed as a valid notice since the same has been sent to PTC.

3. Learned counsel for PTC India Ltd submitted that the commercial viability of the project may be kept in view by the Commission while taking decision on the petitions.

4. Learned counsel for the Bihar Holding Company Ltd. adopted the arguments made by learned counsel for HPGCL.

5. Learned counsel for the petitioner in his rejoinder submission stated that the Commission in its order in Review Petition No. 26/2012 in Petition No. 155/MP/2012 has considered its earlier order in Petition No. 103/2005 and held that for the purpose of uniformity of approach in tariff determination, jurisdiction has been vested in the CERC where the generating station supplies power to more than one State. Learned counsel further submitted that the Appellate Tribunal in the matter of BSES vs. DERC has held that the provisions of Section 86 of the Act shall be read subject to Section 79 of the Act and therefore, where the Central Commission exercises jurisdiction, the jurisdiction of the State Commission shall be ousted.

6. After hearing the learned counsels for the petitioner and respondents, the Commission reserved order in the petitions on the issue of maintainability.

By order of the Commission

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