

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 77/GT/2013

Subject: Petition for determination of tariff of 262.5 MW capacity sale of power from GMR-Kamalanga Energy Ltd. for the period from 1-4-2013 to 31-3-2014.

Date of hearing: 23.5.2013

Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member
Shri A.S. Bakshi, Member (EO)

Petitioner: GMR – Kamalanga Energy Ltd.

Respondents: GRIDCO, WESCO, SESCO, NEESCO, CESU

Parties Present: Shri Amit Kapur, Advocate, GKEL
Shri K.S. Bindra, GKEL
Shri Jatinder kumar GKEL
Shri R.B. Sharma, Advocate, GRIDCO
Shri S.R. Sarangi, GRIDCO
Shri Satnam Singh, CRISIL

Record of Proceedings

The present petition has been filed by GMR – Kamalanga Energy Ltd (GKEL) under section 62 and 79 (1) (b) of the Electricity Act, 2003 read with CERC (Terms And Condition Of Tariff) Regulation 2009 for determination of tariff for supply of 262.5 MW power to the respondent GRIDCO from Stage – I of the Kamalanga thermal power plant for consumption by the Odisha distribution companies.

2. The petition was listed for hearing on maintainability and the learned counsel for the petitioner made his submissions on the question of maintainability as under:

- a. Being a generating company under section 2 (28) of the Act, it has a composite scheme for supply of power in three states namely Odisha, Haryana and Bihar and this Commission alone has the jurisdiction for determination of tariff.
- b. The power of regulating tariff under section 79 (1) (b) of the Act includes tariff determination under section 62 of the Act and when the conditions under section 79(1) (b) are satisfied the Commission has jurisdiction to regulate tariff including

determination. As per section 79(1)(b) this Commission has the jurisdiction to regulate tariff in case the generating company is generating and selling electricity and has entered into or otherwise having a composite scheme.

- c. Since the petitioner is a generating company having a composite scheme and is supplying power to distributing licensees in three different states this commission has the jurisdiction to determine tariff.
- d. The Commission by its order dated 16-5-2012 in Petition No. 20/MP/2012 has granted liberty to the petitioner to file appropriate petition for determination of tariff as and when it enters or otherwise has a composite scheme for generation and sale of electricity in more than one state. Since the generating station has a composite scheme, this petition has been filed based on the liberty granted by the Commission. Even otherwise this project has been accorded Mega power status on 1-2-2012. Hence the Commission has the jurisdiction.
- e. The orders of this Commission dated 19-10-2012 in Petition No.155/MP/2012 and 3-9-2012 in Petition No.184/2009 as regards jurisdiction to determine tariff may be considered in the present case. Accordingly, the petition may be admitted.

3. The learned counsel for the respondent, GRIDCO objected to the prayer of the petitioner and submitted as under:

- a. The petition is not maintainable since the issue of jurisdiction had been decided by the Commission in its order dated 16-5-2012 in Petition No. 20/MP/2012 against the petitioner. Since there is no change in the circumstances pursuant to the said order of the Commission, this petition is not maintainable.
- b. There is no question of determination of tariff of the generating station under section 79 (1) (b) read with section 62 of the Act as the sale of power to the States of Haryana and Bihar are based on competitive bidding through back to back agreements with PTC Ltd. Since supply of power to distribution companies is through traders, this Commission does not have jurisdiction to determine tariff.

4. On a specific query by the Commission as to whether the judgment dated 15-5-2012 of the Delhi High Court in PTC India Ltd. vs. Jay Prakash Power Ventures Ltd. would be applicable in the present case, the learned counsel for the respondent clarified that the same is not applicable and the petitioner has also not relied upon the said judgment in this petition.

5. The learned counsel for the petitioner clarified that the judgment of the Delhi High Court dated 15-5-2012 is applicable in the present case. He also submitted that in order dated 3-9-2012 in Petition No. 184/2009, this respondent GRIDCO was a party, wherein the Commission has decided the jurisdiction in favour of NTPC for supply of power to distribution companies through traders. In response, the learned counsel for the respondent GRIDCO submitted that the petitioner had entered into a revised PPA with GRIDCO on 4-1-2011 wherein it has been indicated that the Odisha Electricity

Regulatory Commission (OERC) has the jurisdiction to determine the tariff of the generating station of the petitioner. The learned counsel for respondent added that the tariff of the generating station for supply of power to distribution licensee is to be determined in accordance with section 62 (1) (a) of the Act and since no supply has been made to this respondent, the petition is not maintainable.

6. The Commission after hearing the parties admitted the petition and issued notice to the respondents. The respondents are directed to file their replies, including the question on maintainability, with advance copy to the petitioner, on or before 10-6-2013. Rejoinder, if any, shall be filed by the petitioner by 17-6-2013.

7. Matter shall be listed for hearing on 25-6-2013.

By order of the Commission

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