

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

**Shri V.S Verma, Member  
Shri M. Deena Dayalan, Member**

**Petition No. 79/MP/2013  
&  
Petition No. 81/MP/2013**

**Date of Hearing: 15.10.2013  
Date of Order: 16.12.2013**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 12, 13 and 17 of the Power Purchase Agreement dated 07.08.2008 executed between Discoms in Haryana & PTC India Ltd. and back to back PPA dated 12.03.2009 entered into between GMR and PTC for compensation due to Force Majeure events and Change in Law.

**And in the matter of**

Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 12,13 and 17 of the Power Purchase Agreement dated 07.08.2008 executed between Discoms in Haryana & PTC India Ltd. and back to back PPA dated 12.03.2009 entered into between GMR and PTC for compensation due to Force Majeure events and Change in Law. (Construction Period)

**And in the matter of**

1. GMR-Kamalanga Energy Limited
2. GMR Energy Ltd

**Petitioners**

**Vs**

1. Dakshin Haryana Bijli Vitran Nigam Ltd
2. Uttar Haryana Bijli Vitran Nigam Ltd
3. Haryana Power Generation Corporation Ltd
4. PTC India Ltd
5. Bihar State Power Corporation Limited

**Respondents**



## **Parties Present**

1. Shri Amit Kapur, GMR Kamalanga
2. Ms. Ritika Arora, GMR Kamalanga
3. Shri G. Umapathy, Advocate, HPGCL
4. Shri Mohit Kumar Shah, Advocate, BSPCL
5. Shri U.K. Agrawal, HPPC
6. Shri Raheel Kohli, PTC
7. Shri Ravi Janeja, HPPC

## **ORDER**

### **Petition No 79/MP/2013**

In this petition, the petitioners have sought a declaration that the events catalogued in the petition amount to change in law, impacting revenues and costs of the petitioners during the Operating Period of the Power Purchase Agreement (PPA) dated 7.8.2008 signed between the utilities in the State of Haryana and PTC India Ltd who in turn has signed PPA dated 12.3.2009 with the petitioners for sale of power from Kamalanga Thermal Power Plant (the Project) and with a further declaration that for such events of change in law, the petitioners must be compensated in terms of Article 13 of the PPA between PTC and the Haryana utilities.

### **Petition No 81/MP/2013**

2. The petitioners seek compensation for certain events occurring during the construction period, which according to the petitioner are unforeseen, uncontrollable and have rendered the PPA/Project impracticable and impossible to perform and fall within the scope of *force majeure* events.

## **Preliminary Issue of Jurisdiction**

3. The preliminary issue common to these petitions is regarding the jurisdiction of this Commission to entertain the petitions. This issue is being decided through this order.

## **Facts of the Case**

4. Govt. of Odisha signed a Memorandum of Understanding dated 9.6.2006 (MoU) with GMR Energy Limited for setting up a 1000 MW thermal power plant in the State. Later on the capacity of the Project was increased to 1400 MW which is to be executed in two stages, Stage I comprises 3 units of 350 MW each and Stage II comprises 350 MW. Pursuant to the MoU, GMR Energy Ltd. executed the Power Purchase Agreement (PPA) dated 28.9.2006 with GRIDCO valid for a period of 25 years from the date of execution for supply of 25% of the power generated. Stage I of the Project has been awarded the status of Mega Power Project by the Central Government under Ministry of Power letter dated 16.3.2009. The PPA was approved by Odisha Electricity Regulatory Commission (the OERC) under clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003 by order dated 20.8.2009. In the said order dated 20.8.2009, OERC approved the PPAs executed between GRIDCO and other Independent Power Producers (IPPs) also.

5. The petitioner is a subsidiary of GMR Energy Ltd. Therefore, for the purpose of the present order, the petitioner includes GMR Energy Ltd.

6. Subsequently, the petitioner executed a revised PPA dated 4.1.2011 with GRIDCO whereby it was agreed that supply of power to GRIDCO would include supply from the additional capacity of 350 MW to be set up by the petitioner in Stage II.

7. The OERC while approving the PPA dated 28.9.2006 by its order dated 20.8.2009 had directed GRIDCO and the IPPs (which included the petitioner) to file the petitions under Section 62 read with clause (b) of sub-section (1) of Section 79 of the Electricity Act before this Commission for approval of tariff since in the opinion of the OERC, the power projects to be established by the petitioner and other IPPs were inter-State generating stations. Accordingly, the petitioner filed Petition No. 20/MP/2012 on 14.10.2011 for approval of provisional tariff for supply of power to GRIDCO. During the proceedings it emerged that in addition to execution of the PPA for supply of power to GRIDCO, the petitioner had signed agreements for supply of power to the distribution companies in Haryana through PTC and Bihar State Electricity Board (BSEB) after selection through the competitive bidding process adopted under Section 63 of the Electricity Act.

8. While disposing of the Petition No. 20/MP/2012, this Commission in its order dated 16.5.2012 after taking note of the above factual position had observed that supply of power to the distribution companies through PTC after selection through the

competitive bidding was outside the scope of determination of tariff and therefore, the petitioner did not satisfy the requirements of having the composite scheme for generation and sale of electricity in more than one State under clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003. Para 14 of the order dated 16.5.2012 is extracted as under:-

"The petitioner is stated to have, through PTC Ltd., participated and was selected as a successful bidder for supply of 300 MW capacity to the distribution utilities of the State of Haryana and for supply of 260 MW power to BSEB. Power Sale Agreements have been entered into by PTC Ltd with BSEB and the distribution companies of Haryana on 9.11.2011 and 7.8.2008 respectively. The petitioner has submitted that such bidding was under Section 63 of the Act and did not require determination of tariff under Section 62 of the Act. The supply of power to the distribution companies of the successor of the Haryana State Electricity Board and BSEB through PTC is outside the scope of determination of tariffs under Section 79 (1) (b) read with 62 (1) (a) of the 2003 Act. Therefore, the petitioner does not satisfy the requirements of Section 79 (1) (b) read with Section 62 (1) (a) of the Act. In view of this, the petition is liable to be dismissed as not maintainable."

9. In view of the above findings, the Commission dismissed the petition as not maintainable since the supply of power to the distribution companies of Haryana and Bihar under Section 63 of the Act was outside the jurisdiction of the Commission for determination of tariff under Section 62 of the Act. The petitioner was, however, advised to approach the Commission for approval of tariff after it entered into a composite scheme for sale of power in more than one State. The relevant portions of the said order dated 16.5.2012 are extracted as under:

"17. We are of the view that as and when the petitioner enters into or otherwise has a composite scheme for generation and sale of electricity in more than one State to distribution licensees, the petitioner could file an appropriate application before this Commission for determination of tariff of the generating station in terms of the requirements under Section 79(1)(b) read with Section 62(1)(a) of the 2003 Act.

18. We had by our letter dated 17.10.2011 directed the petitioner to submit certain clarifications. As to the question at point (a) in the said letter, the generating station of

GMR Kamalanga Ltd cannot be considered to be an inter-State Generating Station under Section 79 (1) (b) of the 2003 in view of our findings in the foregoing paragraphs. The other questions at point (b) and (c) of our letter dated 17.10.2011 have not been examined as the present petition is liable to be dismissed at the threshold on the preliminary point of maintainability.

19. In the circumstances, the present petition is dismissed as not maintainable with liberty to file an appropriate application before this Commission for determination of tariff of the generating station as and when the petitioner enters into or otherwise has a composite scheme for generation and sale of electricity in more than one State to distribution licensees.”

10. In Petition No 81/MP/2013, the petitioner has pointed out that a series of events which, according to the petitioner, are the *force majeure* events as defined in Article 12 of the PPA dated 7.8.2008 have occurred during the construction period. These events, the petitioner has averred, have not only adversely impacted the estimated cost of the Project but also have delayed its execution thereby making the petitioner liable for liquidated damages. The events of *force majeure* listed by the petitioner are devaluation of Indian Rupee vis-à-vis the US Dollar since November 2007, delay in acquisition of land by the State of Odisha and its agencies, stay order passed by High Court of Orissa on construction activities in relation to certain lands and changes in Fuel Supply Agreement by Coal India Ltd.

11. The petitioner has further listed certain events like changes in Visa policy by the Central Government restricting the number of foreign workers to be granted visas for execution of power projects in India, shifting of evacuation point from Meramundali (through LILO) to Angul as per the inter-State transmission scheme approved by CEA, Lift irrigation deposit of ₹18.60 crore paid to Odisha Lift Irrigation Corporation and deviation of the Fuel Supply Agreement ("FSA") from the New Coal Distribution Policy,

2007 amounting to 'Change in Law' as defined under Article 13 of the PPA have either caused delay in construction or have adversely impacted the petitioner by increasing the cost of construction.

12. The petitioner has in Petition No. 79/MP/2013 further catalogued certain events which the petitioner has urged, amount to Change in Law and will increase the costs of supply of electricity by the petitioner during the Operating Period of the PPA. Briefly stated, these events are increase in the rate of royalty on coal by the Central Government, levy of Clean Energy Cess, imposition of Excise Duty on coal, change in coal pricing policy, deviations from the New Coal Distribution Policy, change in freight charges by the Railways, increase in Minimum Alternate Tax Rates, increase in VAT Rate and increase in water charges.

13. On the preliminary issue of jurisdiction, the petitioner has submitted that it has a composite scheme for supply of power to more than one State since it has a scheme to supply power to the entities in the three States, namely, the States of Odisha, Haryana and Bihar. The petitioner has submitted that in the competitive bidding process initiated by the distribution companies in the State of Haryana for supply of power under Section 63 of the Electricity Act, 2009 wherein the petitioner had participated through PTC India Ltd (PTC), PTC was selected as the successful bidder. It has been stated that PTC entered into separate PPAs dated 7.8.2008 with the distribution companies in Haryana for supply of 300 MW of power. The petitioner has stated that it executed a PPA dated 12.3.2009 with PTC, which according to the petitioner, is back-to-back arrangement to

PTC's PPA with the Haryana distribution companies, though the petitioner had earlier executed the PPA dated 31.10.2007 with PTC for sale of 323 MW to enable PTC to participate in competitive bidding. The petitioner has stated that in the competitive bidding by BSEB it was selected as the successful bidder and has executed the PPA dated 9.11.2011 with BSEB for supply of 282 MW gross (260 MW net of auxiliary consumption) power.

14. Based on the above facts, the petitioner has submitted that the Commission has jurisdiction to determine the tariff under Section 62 read with clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003 because the petitioner, as a generating company, is having the composite scheme for sale of power in more than one State.

15. The Haryana utilities, Dakshin Haryana Bijli Vitran Nigam Limited and Uttar Haryana Bijli Vitran Nigam Limited have filed their preliminary submissions dated 12.7.2013 in Petition No 79/MP/2013. It has been submitted that they have already approached Haryana Electricity Regulatory Commission (the Haryana Commission) by filing a petition under clause (f) of sub-section (1) of Section 86 of the Electricity Act on 21.9.2011 seeking adjudication of the issues raised by the petitioner. The Haryana Utilities have submitted that the petitioner has participated in the proceedings pending before the Haryana Commission, without raising any objection as to the jurisdiction of that Commission. It has been alleged that the petitioner has suppressed the fact of pendency of those proceedings. The Haryana utilities have further stated that the core issue that arises is whether the petitioner as a generating company has entered into or



otherwise has a composite scheme for generation and sale of electricity in more than one State. According to the Haryana utilities, the petitioner does not have a composite scheme for generation and sale of electricity in more than one State. It has been stated that the petitioner and PTC who participated in Case I bidding process were one of the successful bidders. It has been stated that the essence of the bidding process was that the supply of electricity was at the State periphery. Therefore, according to the Haryana utilities, the petition is not maintainable.

### **Submission during hearing**

16. We have heard learned counsel for the petitioner and the respondents on the question of jurisdiction.

17. Learned counsel for the petitioner has submitted that the petitioner as a generating company has a composite scheme for generation and sale of electricity in more than one State since supply is to be effected to three States, the States of Odisha, Haryana and Bihar. Therefore, learned counsel has argued, the conditions under clause (b) of sub-section (1) of Section 79 have been satisfied. Accordingly, learned counsel has submitted that the Commission has the jurisdiction. Even otherwise, according to learned counsel, the power project has been accorded Mega Power status by the Central Government and for this reason too, the Commission is invested with the jurisdiction. Learned counsel has relied upon the orders of the Commission dated 19.10.2012 in Petition No. 155/MP/2012 and 3.9.2012 in Petition No. 184/2009 on the

question of jurisdiction to determine tariff of its generating station. He has submitted that in the order dated 3.9.2012 in Petition No. 184/2009, to which GRIDCO was a party, the Commission has settled the question of jurisdiction when it held that determination of tariff for supply of electricity by NTPC to the distribution companies through a trader (GRIDCO) is within the jurisdiction of the Commission.

18. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Delhi High Court dated 15.5.2012 in OMP No 677/2011 (PTC India Ltd Vs Jairakash Power Ventures Ltd) wherein it has been held that supply of power by a generating company to the trading licensee who in turn sells power to a distribution licensee amounts to .supply from a generating company to a distribution licensee and, therefore, determination of tariff is within the jurisdiction of the Appropriate Commission.

19. Learned counsel for GRIDCO has submitted that the issue of jurisdiction is already settled in the order dated 16.5.2012 in Petition No 20/MP/2012 against the petitioner. Since there is no change in the circumstances consequent to the said order of the Commission, the present petition is not maintainable. Learned counsel pointed out that the question of determination of tariff under clause (a) of sub-section (1) of Section 62 read with clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003 by the Commission cannot arise in the present case as the sale of power to the States of Haryana and Bihar is based on competitive bidding. Learned counsel has further submitted that the petitioner entered into a revised PPA with GRIDCO on

4.1.2011 wherein it has been agreed that the State Commission has the jurisdiction to determine the tariff of the Project. Learned counsel argued that by virtue of the fact that the sale to the States of Haryana and Bihar is consequent to the process of competitive bidding, the judgment dated 15.5.2012 of the Hon'ble High Court is not applicable to the present case.

20. GRIDCO has pointed out that under clause 2.2 (f) of revised PPA signed on 4.1.2011, the parties have agreed for determination of tariff by the OERC. According to GRIDCO, in view of these facts, the OERC has the jurisdiction to determine the tariff in the present case. GRIDCO has stated that the Hon'ble Delhi High Court dated 15.5.2012 in OMP No 677/2011 (PTC India Ltd Vs Jairakash Power Ventures Ltd) has not considered the situation where tariff determination has been by competitive bidding process under Section 63 of the Electricity Act. As such, according to GRIDCO, the judgment has no application to the facts of the present case. GRIDCO has pointed that in the present case, separate agreements were executed on different occasions, with different tariffs.

21. The learned counsel for the Haryana utilities has made arguments similar to the made by learned counsel for GRIDCO.

### **Analysis and Findings**

22. We have carefully considered the rival contentions of the parties.

23. On the question of maintainability, GRIDCO has relied upon the revised PPA dated 4.1.2011 between the petitioner and GRIDCO according to which the parties have agreed for determination of tariff by OERC. Based on this clause in the revised PPA, GRIDCO has argued that the jurisdiction of this Commission is ousted and is vested in OERC. The submission of GRIDCO is not based on the correct legal position. The settled principles of law are that the parties by their agreement cannot confer jurisdiction upon a forum which does not have the jurisdiction under the law and the parties by their agreement cannot oust the jurisdiction of the forum vested under the law. Therefore, what is to be seen is whether under the law this Commission has been invested with the jurisdiction to determine the tariff in the present case. It is of relevance to note that OERC in its order dated 20.8.2009 has already decided the question of jurisdiction as it advised the petitioner to approach this Commission for approval of tariff as the Project is an inter-State generating station. There is nothing on record to show that OERC has revisited its earlier direction or has approved the revised PPA dated 4.1.2011 that incorporates clause 2.2 (f). Therefore, the contention of GRIDCO on the basis of the revised PPA dated 3.1.2011 does not merit any further consideration and deserves outright rejection.

24. The substantive issue requiring examination while considering the question of jurisdiction is whether the petitioner has a composite scheme for generation and sale of electricity in more than one State. This Commission in its order dated 16.5.2012 held that the Project did not fulfill the conditions of clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003. On the basis of this finding, the petition was dismissed,

though the petitioner was granted liberty to file appropriate petition for determination of tariff as and when it entered or otherwise had a composite scheme for generation and sale of electricity in more than one State.

25. There is no dispute that the petitioner has entered into PPAs for supply of electricity to the States of Odisha, Haryana and Bihar. The supply in the State of Odisha is through GRIDCO, the intra-State electricity trader and to the State of Haryana is through PTC, the inter-State trading licensee. The underlined reason for dismissal of the petition as noticed from para 14 of the order dated 16.5.2012 was that power supplied to PTC by the petitioner for further sale to the distribution companies in the States of Haryana and sale of power to Bihar does not require determination of tariff under clause (a) of sub-section (1) of Section 62 and therefore, sale of power by the petitioner to these States through PTC does not amount to sale of electricity by the generating company. The Commission accordingly held that the petition was not maintainable as the requirement prescribed under clause (b) of sub-section (1) of Section 79 of the Electricity Act was not met.

26. The question whether sale of electricity by a generating company to the distribution licensees in the States through PTC arose for consideration before Single Judge Bench of the Hon'ble Delhi High Court in OMP No 677/2011 (PTC India Ltd Vs Jairakash Power Ventures Ltd). In that case, Jaiprakash Power Ventures Ltd, a generating company, had entered into PPA with PTC for sale of power. The PPA provided that the tariff for sale of power would be determined by this Commission. PTC

in turn executed the Power Supply Agreement with the distribution companies in the States of Punjab, Rajasthan, Haryana and Uttar Pradesh. The question arose whether this Commission had power to determine tariff for sale of electricity by Jaiprakash Power Ventures Ltd to PTC since Section 62 of the Electricity Act does not provide for fixation of tariff for sale of electricity by a generating company to the trading licensee. The Hon'ble High Court in its judgment dated 15.5.2012 held that when the trader intervenes in the supply of power by a generating company to the distribution licensee, the transaction would still form the subject matter of regulation by the Appropriate Commission within the meaning of Section 62 read with Para 4(x) of the Statement of Objects and Reasons of Electricity Act, 2003. The Hon'ble High Court rejected the argument that where a trading licensee sells power to a distribution licensee and not directly to a consumer, the tariff for such a supply by the generating company to the trading licensee would not be amenable to the regulatory jurisdiction of the Regulatory Commission at the Central and State levels under Section 62 of the Electricity Act, 2003. The Hon'ble High Court directed Jaiprakash Power Ventures Ltd to approach this Commission for approval of tariff for supply of electricity to PTC. The judgment of the Hon'ble High Court leads to an inference that when the generating company, other than that owned or controlled by the Central Government, sells electricity to distribution licence in more than one State, whether directly or through the electricity trader, this Commission has the jurisdiction to regulate the tariff of the said generating company.

27. Jaiprakash Power Ventures Ltd filed appeal before the Division Bench of the Hon'ble High Court. It has been brought to our notice that appeal has since been

withdrawn and thereby the judgment of the learned Single Judge has become final. For sake of record it is mentioned that the judgment of the Hon'ble High Court dated 15.5.2012 was not within the knowledge of this Commission when the order dated 16.5.2012 in Petition No 20/MP/2012 was passed.

28. This Commission in its order dated 3.9.2012 in Petition No 184/2009 examined the question whether sale of electricity by NTPC Ltd to GRIDCO, the intra-State trading licensee, was amenable to tariff determination by the Commission under Section 79 of the Act. This Commission by relying upon the judgment of the Hon'ble Delhi High Court dated 15.5.2012 *ibid*, in the order dated 3.9.2012 upheld its jurisdiction to determine tariff for sale of electricity by NTPC, a generating company owned or controlled by the Central Government, from Talcher TPS to GRIDCO under clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The relevant para of the said order dated 3.9.2012 reads as under:

“20. The issue of jurisdiction of the Commission to determine the tariff of the generating companies for supply of power to the traders and from the traders to the distribution licensees has received judicial attention from time to time as noted above. We notice that the Appellate Tribunal in *Noida Power Company Ltd v Uttar Pradesh Power Corporation Ltd* and in *Lanco Power Ltd v Haryana Electricity Regulatory Commission* has taken the view that when power is supplied to a trading licensee which has back to back arrangement for supply of the same power to the distribution licensees, the appropriate Commission has the power to determine the tariff. The High Court of Delhi in *PTC India Ltd v Jai Prakash Power Ventures Ltd* has categorically held that when the trading licensee intervenes in the process of supply of electricity by a generating company to the distribution licensee, the transaction would be subject matter of regulation under section 62 of the Act. In the context of *JP Power Venture Ltd*, the High Court has held that the transactions involving the supply of power by the generating company to PTC would be regulated by CERC since PTC is selling the power to the distribution licensees for eventual supply to the consumers. The appeal against the said judgment is pending and therefore, the issue has not attained finality. However, considering the fact that the present petition has been filed in 2009 for determination of additional capital expenditure for the years 2007-08 and 2008-09, we propose to dispose of the petition in the light of the judgment of the High Court dated 15.5.2012. We intend

to clarify that if the issue decided in the said judgment is modified in appeal, the Commission will reopen issue and decide the question of jurisdiction in accordance with law.”

29. In the present case, the petitioner has arrangements for sale of power to the State of Odisha through MoU route and to the States of Bihar and Haryana by competitive bidding through an intermediary, PTC in case of supply to the State of Haryana. In view of the legal position emerging out of the judgment of the Hon'ble High Court and followed by this Commission in its order dated 3.9.2012 in Petition No. 184/2009, the decision in the order dated 16.5.2012 needs to be revisited, particularly in view of the fact that this Commission had granted liability to the petitioner to approach the Commission after a composite scheme for generation and supply of power emerges in case of the petitioner.

30. It is seen that the PPAs with the entities in the three States were executed on different points of time and for different quantum. The PPA with GRIDCO for supply of 262.5 MW of power was initially executed by the petitioner on 28.9.2006. Later on the revised PPA was entered into on 4.1.2011 for supply of power from Stage II of the Project having capacity of 350 MW. PTC signed agreements dated 7.8.2008 with the Haryana utilities and also signed the PPA dated 12.3.2009 with the petitioner as a back-to-back arrangement for supply of power. On 9.11.2011, the petitioner entered into PPA with Bihar State Electricity Board for supply of 282 MW gross power at Bihar STU bus-bar interconnection point. The tariff agreed to under the PPA was adopted by Bihar Electricity Regulatory Commission on 27.11.2012. Based on these facts, GRIDCO has urged that since PPAs have been entered into on different points of time, it cannot be



said that the petitioner has the composite scheme for generation and sale of electricity in more than one State. The objection raised by GRIDCO should not detain us longer as this issue has already been decided by this Commission in its order dated 19.10.2012 in Petition No 155/MP/2012 (*Adani Power Limited vs. Uttar Haryana Bijli Vidyut Nigam Ltd*). This Commission has held that for the purpose of jurisdiction under clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003, it is not necessary that the composite scheme for generation and sale to more than one State should be in existence at the beginning. It has been held by this Commission that the composite scheme can be entered into by the generating company at any stage subsequently and the jurisdiction gets vested in this Commission as and when the generating company enters into the composite scheme. The relevant para of this Commission's order dated 19.10.2012 is extracted hereunder:

"23. ... Therefore, it is our considered opinion that a generating company may enter into the composite scheme for generation and sale of electricity in more than one State at any time during the life of the generating station(s) owned by it. Any other interpretation will also impinge on the policy of common approach on the matters of tariff of the generating companies supplying electricity to more than one State enshrined in clause (b) of subsection (1) of Section 79. In this view of the matter, it is concluded that Adani entered into composite scheme for generation and sale of electricity in more than one State on 7.8.2008 when it signed PPAs with the distribution companies in the State of Haryana. Adani has also stated that it is in the process of establishing generating stations in different States. For this reason also, Adani as a generating company, has the composite scheme for generation and sale of electricity in more than one State. Therefore, regulation of tariff of Adani as a generating company is within the jurisdiction of this Commission."

31. Another objection that has been taken by GRIDCO is that the fact of sale of power by the petitioner to the States of Haryana and Bihar through the process of competitive bidding impinges on the jurisdiction of this Commission since in these cases there is no determination of tariff by this Commission and the tariff has already been

adopted by the respective State Commission. It was argued by learned counsel for GRIDCO that the judgment of the Hon'ble High Court did not apply to the facts of the present case because in that case the tariff was not determined by the competitive bidding process. It is clarified that in Petition No 155/MP/2012, reference to which has been made in the preceding para, the tariff was discovered through the process of competitive bidding for supply of power in the States of Gujarat and Haryana. This Commission held that regulation of tariff of Adani Power Ltd is within the jurisdiction of this Commission. It is also pointed out that power of this Commission under clause (b) of sub-section (1) of Section 79 of the Electricity Act is not limited to determination of tariff. The power conferred upon this Commission is to "regulate" the tariff which power is much wider than the power of determination of tariff under Section 62 and covers other aspects in addition to determination of tariff. Viewed in the background of these facts, the objection by GRIDCO is without any force.

32. There is yet another fact which bears notice. The Project has been accorded the status of Mega Power Project by Ministry of Power by letter dated 16.3.2009. One of the essential conditions for grant of Mega Power Project status under the Mega Power Policy of the Central Government is that the supply from the generating station would be to more than one State. Therefore, it is implicit in the Mega Power Project status that the petitioner supplies power to more than one State. Such supply has necessarily to be through the composite scheme.

33. To sum up, it is held that supply of electricity by the petitioner to the States of Odisha, Haryana and Bihar is under the composite scheme for generation and sale of electricity in more than one State. Accordingly, this Commission has power to regulate the tariff of the generating station of the petitioner under clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003. As a corollary it follows that the powers of adjudication of the claims and disputes involving *force majeure* and Change in Law events under the PPAs is vested in this Commission.

34. In view of the above discussion, the petitions are maintainable. The respondents may file their replies on merits latest by 31.12.2013 with copies to the petitioner who may file its rejoinder, if any, by 15.1.2014.

35. These petitions shall be set down for hearing on 11.2.2014

sd/-  
**(M Deena Dayalan)**  
**Member**

sd/-  
**(V S Verma)**  
**Member**