

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 53/MP/2014

- Subject : Petition under Section 79 (1) (b) read with section 79 (1) (c) and Section 79 (1) (f) of the Electricity Act, 2003, and Article 8 and Article 14 of the Power Purchase Agreement dated 21.3.2013 executed between EMCO Energy Limited and Electricity Department, Dadra and Nagar Haveli for recovery of capacity charges arising due to non-scheduling of power as per the terms of the Power Purchase Agreement.
- Date of hearing : 8.7.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
- Petitioner : EMCO Energy Limited
- Respondents : DNH Power Distribution Corporation Limited and others
- Parties present : Shri Amit Kapur, Advocate, EMCO
Shri Vishrov Mukherjee, Advocate, EMCO
Shri Anand K. Ganesan, Advocate, DNH Power
Shri MG. Ramachandran, Advocate, GETCO
Ms. Anushree Bardhan, Advocate, GETCO
Ms. Pragya Singh, WRLDC
Shri Manju Gupta, PGCIL
Shri Y.K. Sehgal, PGCIL
Ms. Jyoti Prasad, POSOCO

Record of Proceedings

Learned counsel for the petitioner submitted that the respondent, DNH Power Distribution Corporation Limited (DNH) had filed its reply on 7.7.2014 after a delay of more than a month and reply has been filed only on the issue of maintainability of the petition even though the petition had already been admitted by the Commission. He further submitted that DNH was intentionally delaying proceedings since it did not have sufficient transmission capacity for the contracted capacity.

2. Learned counsel for DNH submitted that the issue of maintainability needs to be taken up first since the jurisdiction in the present case is that of Joint Electricity Regulatory Commission and not CERC on the following grounds:

- (i) The dispute pertains to the payment of capacity charges under only one PPA; and
- (ii) The other procurers of the generating station (MSEDCL and TANGEDCO) are not involved as the PPA is between the petitioner and respondent only.

3. Learned counsel for DNH further submitted as under:

(a) In accordance with Clause 4.4.2 of schedule 4 of the PPA, DNH is not liable for payment of capacity charges for the power not scheduled to DNH in terms of the PPA.

(b) The petitioner cannot claim capacity charges as deemed availability of capacity for the power not scheduled due to non-availability of open access owing to constraint in transmission network. However, DNH is making the payment in terms of the PPA.

(c) As per Clause 3.1.1 of the PPA, it is the responsibility of the petitioner (seller) to obtain the necessary permission for the long term open access as deemed necessary for the transmission system from the injection point up to the delivery point.

4. In response, learned counsel for the petitioner submitted that the issue is whether the delivery point is the territory of DNH and that the petitioner has failed to secure open access for supply of power up to the delivery point. Learned counsel for the petitioner drew the Commission's attention to the following:

- (i) The PPA provides that the delivery point is the Gujarat State periphery and the obligation for evacuation of power from delivery point is that of DNH.
- (ii) In the 18th Committee meeting of the Western Region constituents it was noted that due to overloading of GETCO network and insufficient capacity for transfer of power to DNH, open access could not be granted to the petitioner.

5. Learned counsel for the petitioner submitted that it is an admitted position that the capacity constraint is beyond the delivery point and is solely to the account of DNH.

6. Learned counsel for GETCO submitted that reply to the petition has already been filed.
7. The representative of the WRLDC submitted that the petitioner's LTA has commenced from 7.7.2014.
8. After hearing the learned counsels for the petitioner DNH and GETCO, the Commission observed that the preliminary objections raised by DNH would be considered along with merit of the case. The Commission directed DNH to file its reply on merit explaining the factual position, by 30.7.2014 with an advance copy to the petitioner, who may file its rejoinder, if any, by 14.8.2014.
9. The Commission directed that due dates of filing the reply and rejoinder should be strictly complied with.
10. The petition shall be listed for hearing on 28.8.2014.

By order of the Commission

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