

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 305/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of order: 7<sup>th</sup> of March, 2017**

**In the matter of**

Petition for Section 79 of the Electricity Act, 2003 read with the provisions of the Power Supply Agreement dated 5.1.2011 for directions to make energy charge as pass-through based on the actual fuel cost incurred by the petitioner.

**And**

In the matter of

Adhunik Power and Natural Resources Ltd.  
9B, 9<sup>th</sup> Floor,  
Hansalaya Building,  
15 Barakhamba Road, Connaught Place,  
New Delhi-110 001

**....Petitioner**

**Vs**

1. West Bengal State Electricity Distribution Company Ltd.  
Vidyut Bhawan, 7<sup>th</sup> Floor, DJ-Block, Sector-II,  
Salt Lake City , Kolkata -700 091

2. PTC India Ltd.  
2<sup>nd</sup> Floor, NBCC Tower,  
15 Bhikaji Cama Place,  
New Delhi-110 066

**....Respondents**

**The following were present:**

Shri Sanjay Sen, Senior Advocate, APNRL  
Shri Saransh Shaw, Advocate, APNRL  
Shri Pailnay D. Shah, Advocate, APNRL  
Shri Vineer Sarawagi, APNRL  
Shri Aashish Bernard, Advocate, PTC India Ltd.  
Shri Ravi Shankar, PTC India Ltd.  
Shri Vishrov Mukerjee, Advocate, WBSEDCL  
Ms. Raveena Dhamija, Advocate, WBSEDCL

## ORDER

The present petition has been filed by Adhunik Power and Natural Resources Limited under Section 79 of the Electricity Act, 2003 (Act) read with the provisions of Article 10 of the PSA dated 25.3.2011 with the following prayers to:

“(a) Declare that the petitioner is entitled to recover energy charges on the basis of actual landed cost of coal from alternate sources, in terms of the CERC (Terms and Conditions of Tariff) Regulations, 2009;

(b) Direct that the petitioner be compensated for an amount of Rs. 187.08 crore towards energy charges on the basis of actual landed cost of coal from alternate sources, for the period of electricity supplied from 8.7.2013 to 31.10.2015, in accordance with the supplementary bills raised by the petitioner;

(c) Direct the parties to amend the PPA to reflect the change in calculation of energy charges, if considered necessary;

(d) Direct the respondents to pay energy charge under the PPA and PSA based on the actual landed cost of coal received from alternate sources, calculated in terms of CERC (Terms and Conditions of Tariff) Regulations, 2009

(e) Direct the respondents to pay surcharge dues for late payment as per the provisions of the PPA/PSA in order to compensate the petitioner for the average rate of interest incurred on the cost of loans owing to the increase in tariff;

(f) Condone any shortcoming/deficiencies in the Petition and allow PTC/WBSEDCL to pay as per the prayer of the petitioner;

(g) Grant an expeditious hearing of this petition; and

(h) Pass such and further orders, as the Hon`ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case.”

2. Brief facts of the case are that the Petitioner has set up a 540 MW thermal power project in District Saraikela-Kharsawan in Jharkhand consisting of two units of 270 MW each. Both units of the project of the Petitioner were commissioned on 21.1.2013 and 19.5.2013 respectively. The petitioner has the arrangement to supply (i) 123 MW to the State of Jharkhand under the PPA dated 28.9.2011, (ii) 100 MW to WBSEDCL under PPA dated 25.3.2011 with PTC and back to back PSA between PTC and the Petitioner dated 5.1.2011 and (iii) 100 MW to TANGEDCO under PPA dated 19.12.2013.

3. The petitioner was allocated Ganeshpur coal block in the State of Jharkhand jointly with Tata Steel based on which the Petitioner executed the PSAs and PPAs. Subsequently, the Hon`ble Supreme Court vide its judgments dated 25.8.2014 and 29.4.2014 cancelled the Ganeshpur coal block. The petitioner requested PTC to approach WBSEDCL to make coal cost as pass-through till fully operationalised of coal block. In response, PTC vide its letter dated 13.5.2013 informed the petitioner that its proposal with regard to coal cost pass-through is not acceptable to WBSEDCL.

4. The petitioner has submitted that Government of India, Ministry of Power has approved fuel pass-through for short supply of quantum of coal by Coal India Limited and vide letter dated 31.7.2013 directed Electricity Regulatory Commissions to take necessary action to implement the decision with regard to impact on tariff in the concluded PPA due to shortage of domestic coal availability. Accordingly, the Petitioner has been raising supplementary bills for the power supplied to WBSEDCL based on actual energy charge *vis-a-vis* the PPA energy charge of Rs. 0.951/kWh with request to take up the cost escalation with WBSEDCL/WBSERC and to make fuel as pass-through based on the directions of Government of India. Subsequently, the petitioner vide its letters dated 31.1.2014, 31.3.2014, 1.6.2015, 19.10.2015 and 20.11.2015 raised the bills to WBSEDCL for supply of power. However, WBSEDCL vide its various communications rejected the petitioner`s claim on the ground that the claim of additional fuel cost is not in terms of the PPA dated 5.1.2011. Subsequently, PTC vide its letter dated 23.9.2014 informed the petitioner that it should approach appropriate Regulatory Commission to resolve the issue.

5. In the backyard, the petitioner has filed the present petition seeking the reliefs as mentioned in para 1 of this order.

6. The Commission issued notices to the respondents, namely WBSEDCL and PTC on the issue of maintainability. The respondents have filed their replies vide affidavit dated 21.3.2016. The petitioner has filed its rejoinder vide affidavit dated 23.3.2016. The Commission also heard at length the learned senior counsel for the petitioner and the counsel for WBSEDCL on the issue of maintainability.

7. The Petitioner has submitted that it has a composite scheme for generation and supply of electricity in more than one State and therefore, fulfills the requirement of Section 79 (1) (b) of the Act. Consequently, the dispute between the Petitioner and WBSEDCL / PTC can be adjudicated under Section 79 (1) (f) of the Act. The Petitioner has relied upon the order of the Commission dated 16.12.2012 in Petition No. 155/MP/2013 (Adani Power Ltd Vs. GUVNL) in support of its contention that the petitioner has a composite scheme for supply of power from the generating stations to more than one State. The respondent, WBSEDCL has vehemently opposed the jurisdiction of the Commission on the ground that the Petitioner has already approached JERC with regard to the supply of power to the State of Jharkhand and cannot be permitted to invocation jurisdiction of the Central Commission as well as the State Commission.

8. Without going into the merit of the arguments advanced by the learned senior counsel for the petitioner and learned counsel for the respondent at this stage, it is pertinent to mention that the order dated 16.12.2012 in Petition No. 155/MP/2012 was challenged by Haryana Utilities in the Appellate Tribunal for Electricity. The Full

Bench of the Appellate Tribunal in the judgment dated 7.4.2016 has upheld the jurisdiction of the Commission as under:-

“118. In view of the above discussion, we hold that the supply of power to more than one State from the same generating station of a generating company, ipso facto, qualifies as ‘Composite Scheme’ to attract the jurisdiction of the Central Commission under Section 79 of the said Act.....”

9. The said judgment has been challenged before the Hon’ble Supreme Court by Prayas Energy Group Ltd in which the decision with regard to the composite scheme has been challenged. Hon’ble Supreme Court is presently hearing the issue of composite scheme. In the view of the Commission, it will be appropriate to await the judgment of the Hon’ble Supreme Court on the issue of composite scheme before deciding the jurisdiction of the Commission to adjudicate the dispute raised in the present petition.

10. Accordingly, the petition is adjourned *sine die* with liberty to either of the parties to mention the matter after the judgment of the Hon’ble Supreme Court with regard to composite scheme.

Sd/-  
**(Dr. M.K. Iyer)**  
Member

sd/-  
**(A.S. Bakshi)**  
Member

sd/-  
**(A. K. Singhal)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson