

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 114/MP/2019**  
**(on remand)**

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 for adjudication of disputes arising out of Power Purchase Agreement dated 27.11.2013 executed between the Petitioners and the Respondent.
- Petitioner : 1. GMR Energy Trading Limited  
2. GMR Warora Energy Limited
- Respondent : TANGEDCO
- Date of Hearing : **11.10.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I.S Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member
- Parties Present : Shri Vishrov Mukherjee, Advocate, GMR  
Shri Yashaswi Kant, Advocate, GMR  
Ms Priyanka Vyas, Advocate, GMR  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Ms. Aakanksha Bholra, Advocate, TANGEDCO  
Mr. Rahul Ranjan, Advocate, TANGEDCO

**Record of Proceedings**

The matter was re-listed for hearing after remand from APTEL

2. During the hearing, the learned counsel for the Petitioner mainly submitted that:
- (a) APTEL vide its judgment dated 7.10.2022 has set aside the order of the Commission dated 4.2.2022, observing that grid constraints under the PPA are natural Force Majeure events and Respondent TANGEDCO is not liable to pay tariff for the period of the grid constraint. Accordingly, the matter has been remanded to the Commission, with a direction to consider the matter afresh and grant relief to the Respondent as per clause 3.9.1 read with clause 9.7.1 of the PPA;
- (b) In terms of the PPA, the contracted capacity is 150 MW, and as per Article 4.4 of the PPA, the Respondent is obligated to pay tariff for all of the available capacity up to the contracted capacity and the corresponding scheduled energy;



- (c) Contrary to the provisions of the PPA, the Respondent is computing the contracted capacity by deducting the capacity qua the backing down instructions issued by RLCDC (in real time) from it and is therefore denying the capacity charges on the basis of availability of the project;
- (d) The Petitioner is being penalized twice (on account of grid constraints / Force Majeure event), first at the stage of determination of availability and secondly at the stage of computation of capacity charges with the reduced contracted capacity.

3. In response, the learned counsel for the Respondent mainly submitted that Article 9.7.1 (c) of the PPA expressly provides that in the event of natural force majeure events, no tariff will be payable for that part of the contracted capacity which is affected by the event. Therefore, on the occurrence of a natural force majeure event, the Respondent is exempted from payment of tariff for the capacity affected, which includes capacity charges and energy charges.

4. The learned counsel for the Petitioner clarified that the term "Tariff" in Article 9.7.1 (c) of the PPA is to be calculated in terms of Schedule 4 of the PPA as per the formula set out therein, and there is no variation as such on the contracted capacity of the project.

5. The learned counsel for the Petitioner requested that the Commission permit it to file written submissions, in the course of the day.

6. The Commission, after hearing the learned counsel for the parties, permitted the Petitioner to file its written submissions, if not done earlier, by **23.10.2023**.

7. Subject to the above, the order in this Petition was reserved.

**By order of the Commission**

**Sd/-**  
(B. Sreekumar)  
Joint Chief (Law)

