

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S. Jayaraman, Member**

Petition No.143/2006

In the matter of

Petition under Section 79 (1) (f) of the Electricity Act, 2003.

And in the matter of

Indraprastha Power Generation Company Limited, New Delhi.....**Petitioner**

Vs

Haryana Vidyut Prasaran Nigam Limited, Panchkula **Respondent**

The following were present:

1. Shri Anand K. Ganesan, Advocate, IPGCL
2. Shri R.K. Jain, Company Secretary, IPGCL
3. Shri Prakash Nayak, IPGCL

**ORDER
(DATE OF HEARING: 14.10.2008)**

The application has been made under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act) for adjudication of dispute arising out of the applicant's claim against the respondent on account of the outstanding O&M expenses and energy charges.

2. The applicant is said to own, operate and maintain, the Indraprastha Power Station (the generating station) in the National Capital Territory of

Delhi. The generating station is said to have been established under an arrangement between the erstwhile Delhi Electricity Supply Undertaking (DESU) and Haryana State Electricity Board (HSEB). HSEB reportedly contributed 1/3rd of the capital cost for setting up the generating station and for that reason the State of Haryana became entitled to the 1/3rd share of the power generated on payment of proportionate O&M expenses and energy charges. The balance 2/3rd share of the electricity generated is supplied in the National Capital Territory of Delhi.

3. The applicant has stated that it became entitled to an amount of Rs.241.50 crore as O&M expenses and energy charges for the electricity supplied to the respondent for the period up to 30.9.2006 based on actual cost and expenses incurred by it. Against this, a sum of Rs.177.34 crore had been paid by the respondent, leaving a balance of Rs.64.16 crore. According to the application, tariff for supply to the respondent is not required to be determined based on the parameters laid down by any appropriate Commission but is based on sharing of O&M expenses and variable charges. The allegation is that the respondent has refused to pay the amount due and accordingly disputes and differences have arisen between the parties. The applicant, therefore, seeks adjudication of disputes and differences.

4. In its reply the respondent has taken a preliminary objection on the maintainability of the application on the ground that adjudication of the issues involving co-investment/partnership projects is outside this Commission's

jurisdiction. It has been further stated that tariff for total electricity from all sources, including the generating station, available in the State of Haryana is determined by the Haryana State Electricity Regulatory Commission.

5. Heard Shri Anand K. Ganesan, Advocate on admission. He stated that the tariff for sale of electricity from the generating station supplied within the National Capital Territory was determined by the Delhi Electricity Regulatory Commission. Learned counsel relied on judgment of the Supreme Court in Gujarat Urja Vikas Nigam Ltd. Vs Essar Power Ltd. [2008 (3) SCALE 469], to support the maintainability of the application and that adjudication of the dispute was within the jurisdiction of the Commission. Learned counsel submitted that no other judicial forum was competent to adjudicate the dispute and differences arising between the parties. None was present for the respondent.

6. Section 79 of the Act lays down the functions of the Commission. The portion of sub-section (1) of Section 79 of the Act so far as that is relevant is reproduced below:

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e)

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

.....

7. Thus, under clause (f) of sub-section (1) of Section 79 of the Act, the Commission is empowered to adjudicate upon the disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) of sub-section (1) and to refer to any dispute for arbitration.

8. The applicant is a company registered under the Companies Act, 1956. The applicant has placed on record a copy of the transfer scheme notified by the Government of NCT of Delhi. The transfer scheme does not give any indication that the respondent holds any shares in the applicant company. On the contrary, it is shown that entire paid up share capital of Rs.180 crore is held by Delhi Power Company Ltd., the holding company. Even if it is accepted that the respondent has share in the applicant company, law recognizes commercial transactions between a company and its shareholders. Therefore, supply of electricity by the applicant company to NCT of Delhi and State of Haryana is recognized by law. It logically follows that the applicant, as a company, has or has otherwise entered into a

composite scheme for generation and sale of electricity in more than one State. The applicant thus falls within the ambit of clause (b) of sub-section (1) of Section 79 of the Act. Therefore, the present dispute raised by the applicant is referable to clause (b) of sub-section (1) of Section 79 and is to be adjudicated by the Commission under clause (b) thereof since the dispute involves the generating company. Accordingly, the preliminary objection by the respondent in regard to maintainability of the application on the ground that the dispute relates to issues involving co-investment/partnership projects is not sustainable and is over-ruled.

9. We admit the petition. The respondent is granted time up to 15.1.2009 to file reply on merits, with a copy to the applicant who may file its rejoinder, if any, by 31.1.2009. List for further directions on 5.2.2009.

10. As noticed above, under clause (b) of sub-section (1) of Section 79 of the Act, read with clause (a) of sub-section (1) of Section 62 thereof, the Commission is authorized to regulate/determine tariff of the generating company. The applicant as a generating company owns two other generating stations, namely, Rajghat Power Station and Gas Turbine Power Station, as noticed from the transfer scheme, which supply power to NCT of Delhi. By virtue of the conclusion arrived at in para 8 above, determination of tariff for all these generating stations owned by the applicant company is within the jurisdiction of this Commission. In that case, Delhi Electricity Regulatory

Commission can exercise power under clause (b) of sub-section (1) of Section 86 of the Act to regulate power purchase and procurement process from the generating stations owned by the applicant, based on tariff approved by the Commission.

11. We direct notice to the applicant, returnable on 5.2.2009, as to why tariff for its generating stations be not approved by this Commission. A copy of this order be sent to Delhi Electricity Regulatory Commission for its comments and suggestions.

**Sd/-
(S. JAYARAMAN)
MEMBER**

**Sd/-
(R. KRISHNAMOORTHY)
MEMBER**

**Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON**

New Delhi, dated the 15th December 2008