

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.24/2000  
IA No.20/2000**

**Coram:**

1. **Shri S.L. Rao, Chairman**
2. **Shri D.P. Sinha, Member**
3. **Shri G.S. Rajamani, Member**
4. **Shri A.R. Ramanathan, Member**

In the matter of

Proposal for purchase of power by PTC from HIRMA Mega Power Project and sale of such power on back to back basis to SEBs .

In the matter of :

M/s. Power Trading Corporation of India Ltd.,  
1115-16, Hemkunt Chambers  
89, Nehru Place, ..... Petitioner  
New Delhi-110 019.

AND

M/s. Southern Energy Asia -Pacific Ltd., ..... Respondents  
(SEAP) and SEBs

The following were present :-

- |     |  |                 |
|-----|--|-----------------|
| 1.  | Shri Pramod Dayal, Advocate, PTC                             | .....Petitioner |
| 2.  | Shri R.K. Madan, CMD, PTC                                    | -do-            |
| 3.  | Shri Mahendra Kumar, GM, PTC                                 | -do-            |
| 4.  | Shri V.L. Dua, AGM PTC                                       | -do-            |
| 5.  | Shri A.K. Maggu, Sr.Manager, PTC                             | -do-            |
| 6.  | Shri Sanjay Kapoor, Country Manager, SEAP                    | .....Respondent |
| 7.  | Shri Parag P. Tripathi, Sr.Advocate, SEAP                    | -do-            |
| 8.  | Ms. Mamta Tiwari, Advocate, SEAP                             | -do-            |
| 9.  | Ms. Neelima Tripathi, Advocate, SEAP                         | -do-            |
| 10. | Shri Sanjeev Aggarwal, Fin.Analyst, SEAP                     | -do-            |
| 11. | Mr.Jonathan Inmaul Linklafer, Project Counsel, Hirma Project | -do-            |
| 12. | Shri J.P. Chalasani, Asstt. VP, Reliance Power Ltd.          | -do-            |
| 13. | Shri Sanie Saran, Dy.Managre, Reliance Power Ltd.            | -do-            |
| 14. | Shri L.N. Nimawat, XEN (P&S), RSEB                           | -do-            |
| 15. | Shri S.C. Mehta, XEN (ISP), RSEB                             | -do-            |

**ORDER**

**(Date of hearing 31-5-2000)**

Apropos our order dated 5<sup>th</sup> May, 2000, the petitioner, PTC has moved an

Interlocutory Application (No 20/2000) praying for substitution of M/S Southern Energy Asia-Pacific Ltd (SEAP) incorporated in Bermuda having its registered office at Cedar House, 41, Cedar Avenue, Hamilton HM 12, Bermuda and having its Principal office in Hong Kong at 18<sup>th</sup> Floor, Hong Kong Telecom Tower, Taiku Place 979 King's Road Hong Kong and its liaison office at 201 & 208, 2<sup>nd</sup> Floor Ashoka Estate, 24, Barakhamba Road New Delhi-110001 as Respondent No 1. It has also been prayed that the validity of MOU may be taken as 22.09.2000 and the address of the petitioner company may be substituted as 10<sup>th</sup> Floor, Hemkunt Chambers, 89, Nehru Place, New Delhi 110019. Shri Pramod Dayal, Advocate appearing for the petitioner has pressed the IA and submitted that the prayers in the IA may be granted. Shri P. Tripathi, learned Senior Counsel appearing for Respondent No.1 has not opposed the prayers made in the IA. This is without prejudice to his rights to refute certain contentions in the application. The representative of RSEB has no objection to the prayers made in the application. No one is present on behalf of other SEBs who are impleaded as respondents. In view of these circumstances, IA 20/2000 is allowed. Office is directed to carry out necessary amendments to the petition. With this order IA 20/2000 stands disposed of. Since no party had any other objection, the petition stands admitted

2. The learned counsel for the petitioner submitted that the respondents be called upon to file their responses and the Commission may fix an early date for hearing the petition. The Commission, however, wanted to be satisfied on the question of its jurisdiction to hear the petition. The learned counsel appearing for the petitioner submitted that in view of the provisions of Section 13 (a) and 13 (b) of the Electricity Regulatory Commissions Act, read with Regulation 80 of the CERC (Conduct of Business ) Regulations, the Commission has jurisdiction to entertain and hear the petition. He pointed out that without approval of the tariff by the Commission, the petitioner cannot enter into an agreement with the respondent No.1 for supply of electricity. He further pointed out that the petitioner has made an offer for tariff as approved and finalised by the tariff committee appointed by the Government. The learned senior counsel for respondent No.1 corroborated the views of the petitioner on the question of jurisdiction and stated that the parties are *ad idem* on this issue and there is no disagreement between them on the question of jurisdiction. He referred to para 5 of the order dated 9-3-2000 in petition No.11/2000 whereby the question of jurisdiction in such matters stood settled. We direct that the petitioner as well as the SEBs shall place on record their views on the question of Commission's jurisdiction within a week from today so that the same would be available for anyone to inspect.

3. The Commission expressed its anxiety to expeditiously dispose of the petition in view of the importance of this project in the interest of Indian economy and observed that the proceedings in this petition should be more of the nature of conciliation proceedings rather than adversarial proceedings. Therefore, the Commission will endeavour to narrow down the areas of difference between the parties. For this purpose, the Commission proposed to appoint independent institutions as experts to interact with the parties with a view to resolving the differences between them. The work of the experts shall be supervised by the Commission and the experts shall be reporting to the Commission of the progress of their work from time to time as may be directed by the Commission. We, therefore, direct the parties to furnish two panels of 3 technical and financial experts each (both Indian and international agencies), and also specify the areas of agreement and disagreement within 10 days from today, so that the Commission could choose for appointment. The areas of disagreement shall form the terms of reference for the experts which should also be drafted by the petitioner in consultation with the other parties. The costs incurred on account of the functioning of the experts shall be equally shared by the petitioner and respondent No.1 with liberty to petitioner to seek shares from SEBs who are respondents. Shri K.Venugopal, Chief (Finance), CERC shall be associated with the experts as an observer on behalf of the Commission.

4. The Commission observed that in order to ensure transparency there shall be a public notice issued in the manner to be prescribed by the Commission so that anyone who would like to participate in the proceedings could be facilitated to do so. The

petitioner shall submit a draft public notice within a week's time for approval and it shall publish the same after approval.

5. Shri SC. Mehta, representative of RSEB pointed out that Powergrid is a necessary party in these proceedings since evacuation of the power generated by respondent No.1 shall be the responsibility of Powergrid. He prayed that directions be issued for impleading the Powergrid as a respondent. On consideration of the point made by Shri S.C. Mehta, we direct the petitioner to implead Powergrid also as one of the respondents and furnish it a copy of the petition within 2 days. Powergrid may file its reply by 10<sup>th</sup> June, 2000.

6. The counsel for respondent No.1 has pointed out that some of the documents referred to by the petitioner in the petition have not been placed on record. The petitioner has agreed to supply to respondent No.1 the copies of the documents as mentioned below:

- (a) Ministry of Power OM dated 21.3.2000.
- (b) Brief note submitted by the petitioner vide D.O. dated 24.12.99.
- (c) Relevant extracts of the minutes of the meeting of the Board of Directors of PTC dated 29.3.2000.

It has been stated on behalf of the petitioner that the other documents are not available or they have not been relied upon. Respondent No.1 is at liberty to raise this issue before the experts to be appointed by us. Respondent No.1 may file its reply to the petition by 10<sup>th</sup> June, 2000. The petition shall be listed for hearing on 13<sup>th</sup> June, 2000 at 2.30 PM.

7. A copy of this order be sent to all concerned including the Powergrid.

Sd\-	Sd\-	Sd/-	Sd/-
(A.R. Ramanathan) Member	(G.S.Rajamani) Member	(D.P. Sinha) Member	(S.L. Rao) Chairman

New Delhi,  
Dated 31.05.2000

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