

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Interlocutory Application No.53 of 2012

in

Petition No. 155/MP/2012

Subject : Application under Section 79 of the Electricity Act, 2003 for evolving a mechanism for regulating including changing and/or revising tariff on account of frustration and/or of occurrence of force majeure (Article 12) and/or change in law (article 13) events under the PPAs due to change in circumstances for the allotment of domestic coal by GOI/CIL and enactment of new coal pricing Regulations by Indonesian Government.

Review Petition No.26 of 2012

in

Petition No. 155/MP/2012

Subject : Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103 of the CERC (Conduct of Business) Regulations, 1999 for Review of Order dated 16.10.2012 passed by this Hon'ble Commission in Petition No.155 of 2012.

Coram	Dr. Pramod Deo, Chairperson Shri S.Jayaraman, Member Shri V.S.Verma, Member Shri M.Deena Dayalan, Member Shri A.S. Bakshi, Member(EO)
Date of Hearing	4.12.2012
Petitioner	Adani Power Limited
Respondents	Uttar Haryana Bijli Vitran Nigam Limited, Panchkula Dakshin Haryana Bijili Vitran Nigam Limited, Panchkula Gujarat Urja Vikas Nigam Limited, Vadodara
Review Petitioner	Uttar Haryana Bijli Vitran Nigam Limited, Panchkula Dakshin Haryana Bijili Vitran Nigam Limited, Panchkula
Present:	Shri Aspi Chenoy, Senior Advocate for petitioner Shri Amit Kapur, Advocate for petitioner Shri Vikram Nankani, Advocate for the petitioner Miss Poonam Verma, Advocate for the petitioner Shri Gautam Sahi, advocate for the petitioner

Shri Malav Deliwala, APL
Shri Jatin Jalundhwala, APL
Shri Jignesh Langalia, APL
Shri MG Ramachandran, Advocate for Haryana Utilities
Ms. Swapana Seshadri, Advocate for GUVNL
Shri P. Jani, GUVNL

RECORD OF PROCEEDING

Petition No.155/MP/2012, along with IA No.53/2012 filed by Adani Power Limited was listed for hearing and Review Petition No.26/RP/2012 filed by Haryana Utilities was listed for admission.

2. Ld. Senior Counsel for the petitioner sought leave of the Commission to withdraw IA No.53/2012 with liberty to file a separate petition at the appropriate stage. The Commission allowed the withdrawal of the IA and clarified that if any separate petition is filed, the same will be dealt with in accordance with the law.

3. Ld. counsel for Review Petitioner submitted that the review petition has been filed seeking review of the order of the Commission dated 16.10.2012 in Petition No.155/MP/2012 on two grounds. Firstly, it has been recorded in para 10 and 16 of the order dated 16.10.2012 that there has been concession on the part of Haryana Utilities on the issue of jurisdiction, whereas no such concession has been made in its written pleadings or oral submission. Secondly, the salient aspect including the earlier decision of the Commission in Petition No.103 of 2005 (Uttaranchal Jal Nigam Ltd. Vs. Uttaranchal Power Corporation Ltd. & others) has not been considered while interpreting the term 'composite scheme' in the order sought to be reviewed. Learned Counsel also relied upon the judgment of Appellate Tribunal for Electricity in Appeal No.228/2006 (PTC India Ltd. Vs .CERC & others) order of the Commission dated 16.5.2012 in Petition No.20/2012 (GMR Karnataka Energy Ltd. Vs. Grid Corporation of Orissa Ltd.) and order dated 11.1.2010 in Petition 109/2009 filed by Torrent Power Ltd. in support of the contention that Adani Power Ltd. on the question of interpretation of composite scheme under section 79(1) (b) of the Act.

4. Ld. Senior Counsel for Adani Power Ltd. submitted that the Commission in its order dated 16.10.2012 has arrived at the conclusion with regard to its jurisdiction on the basis of detailed independent consideration and therefore, the order does not suffer from any error which can be rectified in review.

5. After hearing the parties, the Commission admitted the review petition and directed the petitioner (Adani Power Ltd.) to file its reply by 20.12.2012 and the review petitioner to file its rejoinder by 27.12.2012.

6. The Commission further directed the respondents to file their replies to the main petition by 20.12.2012 and the petitioner to file its rejoinder by 27.12.2012.

7. The Petition No.155/MP/2012 along with Review Petition No.26/RP/2012 shall be listed for hearing on 3.1.2013.

(By Order of the Commission)

Sd/-

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Jt Chief (Law)