

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 53/MP/2014

Subject : Petition under Section 79 (1) (b) read with section 79 (1) (c) and Section 79 (1) (f) of the Electricity Act, 2003, and Article 8 and Article 14 of the Power Purchase Agreement dated 21.3.2013 executed between EMCO Energy Limited and Electricity Department, Dadra and Nagar Haveli for recovery of capacity charges arising due to non-scheduling of power as per the terms of the Power Purchase Agreement.

Date of hearing : 27.11.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Petitioner : EMCO Energy Limited

Respondent : DNH Power Distribution Corporation Limited

Parties present : Shri Amit Kapur, Advocate, EMCO
Shri Vishrev Mukherjee, Advocate, EMCO
Shri Akshat Jain, Advocate, EMCO
Shri Anand K. Ganesan, Advocate, DNH Power
Ms. Pragya Singh, WRLDC
Shri S. Usha, WRLDC
Ms. Malavika Prasad

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed for recovery of capacity charges for the period from November 2013 to June 2014 which has been wrongfully withheld by Dadra and Nagar Haveli Power Distribution Corporation (DNH). Learned counsel for the petitioner submitted as under:

- (a) In terms of the PPA, the petitioner is responsible for transmission of power from the generating station to the delivery point, i.e., 400/220 KV Ambheti sub-station of WRLDC whereas DNH is responsible for ensuring sufficient facilities at the delivery Point for onward evacuation of power.
- (b) Open Access for supply of contracted capacity of 200 MW has been rejected since the transmission system beyond the delivery point does not have

sufficient capacity. Contractually, DNH is liable to pay capacity charges for the entire contracted capacity since refusal of open access is on account of insufficient transmission capacity beyond the delivery point which is to the account of DNH.

(c) The present case involves an inter-State transmission of electricity, since the petitioner is using the inter-State transmission network to supply power from the generating station situated in Maharashtra to DNH and in light of the same, CERC has the power to adjudicate the disputes in terms of Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act, 2003. In fact, the Commission vide Record of Proceedings for the hearing dated 19.5.2014 had directed the impleadment of CTU, STU (GETCO) and WRLDC considering that issues of inter-State transmission are involved.

(d) The generating station is an inter-State generating station supplying power to more than one State and the present case is squarely covered by the Commission's orders dated 16.10.2012 in Petition No. 155/MP/2012 (*Adani Power Limited vs. Uttar Haryana Bijli Vidyut Nigam Ltd*) and dated 16.12.2013 in Petition No. 79/MP/2013 and Petition No. 81/MP/2013 (*GMR-Kamalanga Energy Limited and Another v. Dakshin Haryana Bijli Vitran Nigam Limited and Others*)

(e) In a process involving procurement of power by a single State, the Appropriate Commission for adoption of tariff is the State Commission in terms of Section 63 read with Clause 6.4 of the Competitive Bidding Guidelines. The adoption of tariff under Section 63 read with the Bidding Guidelines will not whittle down or restrict the powers of this Commission under Section 79(1)(b) or (f) of the Electricity Act, 2003. Power/jurisdiction for adoption of tariff under Section 63 and jurisdiction to regulate tariff and adjudicate on disputes under Section 79 are different in scope and ambit and to interpose one on the other will be contrary to the provisions of the Electricity Act. In this regard, learned counsel relied upon the Appellate Tribunal for Electricity Judgments dated 16.12.2011 in *Essar Power Limited vs. UPERC & Ors. and BSES Rajdhani Power Limited v. DERC and Ors.*

(f) The PPA, once approved by the State Commission, pursuant to tariff adopted in terms of Section 63, becomes a statutory/regulated contract and the Commission's jurisdiction in so far as adoption of tariff is concerned is only with respect to combined procurement of power by more than one State through the competitive bidding route. Other than as provided for in terms of Clause 2.4 of the Bidding Guidelines, the Commission has not been given jurisdiction over distribution licensees and the process of procurement of power in relation therewith.

(g) The petitioner is not being permitted to schedule the contracted capacity of 200 MW at the delivery point i.e., 400 KV Ambheti sub-station since the overloading at the delivery point is on account of transfer of power scheduled to DNH from other sources through the GETCO network to the Ambheti sub-station. Due to overloading by DNH, the transmission facilities on the Procurer side for evacuation of power are constrained and consequently there is no capacity beyond the delivery point to accommodate 200 MW supply from the petitioner. It was also submitted that the constraints on the evacuation capacity of DNH are leading to the petitioner not being granted open access for the entire contracted capacity or permitted to schedule and supply 200 MW to DNH.

(h) In terms of the Minutes of the Meeting dated 29.8.2013, it was observed that the evacuation capacity to Union Territory of Dadra and Nagar Haveli is limited due to overloading of GETCO network and inter-connections between DNH and GETCO being opened in phased manner.

(i) Learned counsel for the petitioner referred to the replies filed by GETCO and WRLDC and submitted that the capacity constraint beyond the delivery point has also been accepted by GETCO and WRLDC.

2. In response, learned counsel for DNH submitted as under:

(a) The delivery point as per the PPA is the Ambethi 400/220 KV sub-station of PGCIL, Vapi, Gujarat. As per Article 4.2 of the PPA, it was the petitioner's obligation to obtain all the necessary permissions for long term open access or short term open access for evacuation of power from the power station bus bar to the Injection Point.

(b) Overloading of the Ambethi sub-station is not due to DNH. The basic condition in the bidding process was that it is the petitioner's responsibility for delivery of electricity up to the delivery point. Further, from 1.4.2013, open access has been granted to the petitioner up to the delivery point and there has been no downstream transmission constraint for DNH to take electricity supply.

(c) In terms of the PPA, if the petitioner is not able to get open access to the delivery point, there is no obligation on DNH to pay any capacity charges for such electricity.

(d) Learned counsel referred to paras 11 to 16 of WRLDC's reply and submitted that since the Kala sub-station was not ready, the open access could not be commenced as per the decision of the 18th WR constituents meeting held on 29.8.2013.

(e) Since Section 79(1)(c) of the Electricity Act, 2003 pertains to transmission and conveyance of electricity and does not involve sale or purchase

of electricity, the Commission does not have the jurisdiction to adjudicate the dispute regarding recovery of capacity charges under Section 79(1)(c) of the Electricity Act, 2003.

(f) There is no composite scheme for generation and sale of electricity in the present case.

3. After hearing the learned counsel for the petitioner and the respondent, the Commissions reserved order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**