

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 81/MP/2013

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Articles 12, 13 and 17 of the Power Purchase Agreement dated 7.8.2007 executed between the Distribution Companies in the State of Haryana and PTC India Limited and the back to back PPA dated 12.3.2009 entered into between GMR Energy Limited and PTC India Limited for compensation due to force majeure events and Change in Law impacting revenues and costs during the operating period.
- Date of hearing : 12.2.2015
- Coram : Shri Gireesh B.Pradhan, Chairpeson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
- Petitioner : GMR-Kamlanga Energy Limited, Bangalore
- Respondents : Dakshin Haryana Bijili Vitran Nigam Limited and others
- Parties present : Shri Vishrov Mukherjee, Advocate, GMR
Shri Rohit Venkat, Advocate, GMR
Shri Rohan Yadhav, GMR
Shri Abani P Mishra, GMR
Shri G. Umapathy, Advocate, DHBVNL & UHBVNL
Shri R. Mekhala, Advocate, DHBVNL & UHBVNL
Shri Puvesh Kumar, HPPTCL
Shri R.C.Kaundal, HPPTCL
Shri Rajiv Bhardwaj, Advocate, PTC

Record of Proceedings

Learned counsel for distribution companies of Haryana submitted a note of argument and referred to the provisions of Article 13 of the PPA and the Commission`s order dated 4.2.2015 in Petition No. 21/MP/2013. Learned counsel further submitted that none of other respondents are present today despite notice.

2. Learned counsel for distribution companies of Haryana submitted as under:

- (a) Devaluation of the Indian Rupee, delay in land acquisition and change in Visa Policy are not force majeure events;

(b) The developer who in gross violation of Visa rules employed semi skilled/unskilled worker cannot seek compensation initially under force majeure and now under 'Change in Law'. In this regard, the petitioner's reliance on the Commission's order dated 20.2.2014 in Petition No. 160/GT/2012 (Udupi Power Corporation Ltd Vs. Power Company of Karnataka Ltd.) is not tenable since the force majeure clause in the PPA of Udupi is different from the petitioner's PPA.

(c) The petitioner's claims regarding compensation for 'Change in Law' during construction period is wholly untenable. The petitioner if at all is entitled to any compensation on this account only be as per the terms of the PPA. Unless there is an impact on the cost or revenue related to the business of selling electricity by the petitioner to the procurers, mere 'Change in Law' is not sufficient.

(d) The delay in land acquisition is solely attributable to the developer as the project land has to be acquired by the developer and distribution companies have no concern since in Case-1 bidding, the tariff quoted is the essence of the contract between parties.

(e) The claim of the petitioner with regard to failure of HPPC/PTC to schedule power is untenable since 25% of the net generation was tied up with GRIDCO. Haryana had given its consent to commercially operate the PPA on 31.10.2013. However, the supply of full capacity only commenced from 7.2.2014.

3. In response, the learned counsel for the petitioner referred to note on argument filed on 8.1.2015 and submitted as under:

(a) The change in Visa Policy and delay in land acquisition would be a Force Majeure event in terms of the order dated 20.2.2014 in Petition No. 160/GT/2012. Definition of Force Majeure is an inclusive one and thus the change in Visa Policy would be a Force Majeure Event.

(b) The petitioner should be compensated for both time and cost overrun on account of the Force Majeure events.

(c) The petitioner had communicated to the distribution companies of Haryana its willingness to supply power as early as 20.5.2013. However, no reply was received from them despite several reminders and only in 2014, the distribution companies of Haryana have started accepting power.

4. After hearing the learned counsels for the parties, the Commission directed the petitioner to file the following details on affidavit by 27.2.2015 with an advance copy to the respondents:

(a) Details in relation to the old and new Visa Policy. How many foreign workers were working in the project (i) during the period commencing from signing of EPC contract and ending prior to start of new Visa Policy and under what type of Visa and (ii) after start of new Visa Policy.

(b) Details in relation to the power sold during the period 20.5.2013 to 6.2.2014 when the distribution companies of Haryana were either not accepting power or not receiving full power and the price at which it was sold along with details of revenue earned.

5. The Commission directed the petitioner and the respondents to file by 27.2.2015 their written submissions with note on argument stated to be submitted to the Commission on 8.1.2015.

6. The Commission directed that due date of filing the information and written submissions should be strictly complied with. The information and written submissions filed after due date shall not be considered.

7. Subject to the above, the Commission reserved order in the petition.

By order of the Commission
Sd/-
(T. Rout)
Chief (Law)