

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 307/MP/2015**

- Subject : Petition under Regulation 17 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for seeking clarification/modification of order dated 5.10.2015 in Petition No. 571/MP/2014.
- Date of hearing : 28.1.2016
- Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member
- Petitioner : Udupi Power Corporation Limited
- Respondents : Karnataka Power Transmission Corporation Ltd. and others
- Parties present : Shri Sanjay Sen, Senior Advocate, UPCL  
Shri Sakya Chaudhari, Advocate, UPCL  
Ms. Kanika Chugh, Advocate, UPCL

**Record of Proceedings**

Learned senior counsel for the petitioner submitted that the present petition has been filed seeking clarification/modification of the order dated 5.10.2015 in Petition No. 517/MP/2014 with respect two issues, namely (i) the direction issued under the impugned order relating to sale of part capacity i.e 18.5 MW of the project to third parties, under which the petitioner is required to share the excess in the tariff discovered under competitive bidding vis a vis the tariff fixed by the Commission, with the original beneficiaries of the project in proportion to their share, and (ii) direction of the Commission to the Ministry of Power for reconsidering the Mega Power Status of the petitioner's project in view of non-scheduling of power by PSPCL under the PPA. Learned senior counsel for the petitioner further submitted as under:

- (a) The Commission's direction for reimbursement of the excessive tariff recovered by sale of power under competitive route vis a vis regulated tariff to the original beneficiaries cannot be sustained as there cannot be any beneficiary for a capacity that has not been tied up and is available freely with the developer for merchant sale.
- (b) The rights and obligations of the parties will be limited to contracted capacity under the respective PPAs and not beyond. Beneficiaries under

the cost plus PPA are being made to pay fixed charges only to the extent of the capacity contracted by them. Further, the sharing of any tariff discovered under Section 63 to subsidize the tariff determined under Section 62 of the Act is an infraction of the bidding process, while also allowing less than actual cost/ returns under the cost plus PPA;

(c) Unless the original beneficiaries are paying the capacity charges for the capacity offered for competitive bidding, they have no right whatsoever to claim any benefit in relation to such capacity. In this regard, the clarification/modification of the order to the extent that the 18.5 MW offered by the petitioner to the Respondent No.5, is de hors the tied up power under the long term PPA and the tariff determined for such power by the Commission. There is a clear demarcation between the two capacities, and the petitioner ought to be allowed to recover tariff discovered under the competitive bidding route fully is necessary;

(d) On the second issue, the direction for reconsideration of the Mega Power Status of the project on the premise that the inability or unwillingness of PSPCL to offtake the power corresponding to 10% of the contracted capacity of the Project should disentitle the project from being granted a Mega Power Status will prejudice the petitioner insofar as the petitioner is ready and willing to supply power to PSPCL and has made it clear at various occasions. In so far as the obligation of the petitioner is concerned with regard to satisfying the conditions of the then prevailing Mega Policy is concerned, the same stands fulfilled with the signing of PPA with PSPCL which has been recorded in the PPA. The revised policy does not have the mandatory condition of inter-State sale of power to two or more States. The reversal of the Mega Policy will result in the increase in capital cost and consequential increase in tariff.

2. After hearing the learned senior counsel for the petitioner, the Commission directed to issue notice to the respondents. The Commission directed the petitioner to implead PSPCL as party to the petition and file revised memo of parties.

3. The Commission directed the petitioner to serve copy of the petition on the respondents immediately who may file its reply on affidavit, by 12.2.2016 with an advance copy to the petitioner who may file its rejoinder, if any by 26.2.2016. The Commission directed that due date of filing the replies and rejoinders should be strictly complied with. No extension shall be granted on that account.

4. The Commission directed that the representative of PSPCL to be present on the next date of hearing to clarify the queries of the Commission.
5. The petition shall be listed for hearing on 8.3.2016.

**By order of the Commission**

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