

**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 : 12.4.2016

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

Petitioner : Udupi Power Corporation Limited

Respondents : Karnataka Power Transmission Corporation Ltd. and others

Parties present : Shri Sanjay Sen, Senior Advocate, UPCL
Shri Sakia Singh Choudheri, Advocate, UPCL
Ms. Kanika Chugh, Advocate, UPCL
Shri D.L.Chairdananda, Advocate, PCKL
Ms. Rekha, PCKL
Shri Gaurav Gupta, Advocate, PSPCL
Ms. Jayantika Singh, POSOCO and SRLDC

Record of Proceedings

At the outset, learned senior counsel for the petitioner submitted as under:

(a) Power Company of Karnataka Limited (PCKL) has been scheduling 100% power from the petitioner`s generating station as an ad-hoc arrangement which is an admitted position by both the parties. In light of this arrangement, PCKL has been servicing the capital cost and paying tariff for entire power from the project. However, this arrangement does not constitute any contractual right to Karnataka ESCOMs on united capacity of 18.5 MW as well as 101.5 MW of PSPCL.

(b) The Commission in the impugned order has clearly demarcated that the 18.5 MW capacity was capacity available with UPCL, given that PSPCL did not commit to an arrangement for 18.5 MW available due to augmentation.

(c) Even though the Commission has gone on the correct basis that such power can be sold under competitive bidding, it has wrongly directed sharing of

any excess tariff for such power with PCKL/PSPCL. Such a direction needs modification, as the Commission has itself held in the impugned order that there is no PPA for 18.5 MW power, thus there can be no original beneficiary for such power and no sharing of tariff.

(d) Clause 3.10 of the PPA, is only limited to PCKL's contracted capacity and cannot be relied upon for the 18.5 MW untied power. The impugned order is clear on this issue.

(e) With regard to Mega Power Policy, PSPCL's denial to schedule energy cannot disentitle UPCL from its mega power status. There is a subsisting long term PPA between UPCL and PSPCL. Further, denial of such status may cause loss of benefits to the consumers passed on in the tariff.

2. Learned counsel for PCKL submitted that in the present petition, the petitioner has prayed for reconsideration of the issues on merits, which is not permissible in law and the only remedy available to the petitioner against the Commission's order is to prefer an appeal before ATE. He further submitted that the petitioner cannot recover the capacity charges for 18.5 MW from both the original beneficiaries and the beneficiaries tied up through competitive bidding vis-à-vis under Section 62 of the Act. In response, learned senior counsel for the petitioner submitted that the petitioner had filed an appeal before the Hon`ble Appellate Tribunal for Electricity challenging the direction of the Commission to share the excess tariff recovered by sale of 18.5 MW through competitive bidding. The said appeal has been withdrawn by the petitioner to take a view on the matter by the Commission. Learned senior counsel submitted that prayers in the petition are limited to a clarification only.

3. Learned counsel for PSPCL submitted that PSPCL is supporting the petitioner's contentions.

4. After hearing the learned senior counsel and learned counsel for the parties, the Commission reserved order in the petition.

By order of the Commission

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